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The Solicitors' Journal

VOL. LXXX. **Saturday, June 6, 1936.** No. 23

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Current Topics.

The Budget Leakage Inquiry.

THE Tribunal appointed to inquire whether and, if so, in what circumstances and by what persons any unauthorised disclosure was made of information relating to the Budget for the present year or any use made of such information for the purpose of private gain, issued their report on Tuesday. With the findings themselves we are not directly concerned. They have been accorded in the daily Press the full publicity which their importance warrants, and need not be repeated here. It will be sufficient to state that, having heard a number of witnesses and observed their demeanour, the Tribunal found that there had been unauthorised disclosure of information relating to the Budget by a Cabinet Minister to two of his friends separately, and that each of these last made use of the information disclosed for the purpose of his private gain. It is desired here to draw attention to what may, for want of a better expression, be described as the constitutional position of the Tribunal. Pursuant to resolution of both Houses of Parliament, shortly after the Budget, PORTER, J., Mr. GAVIN SIMONDS, K.C., and Mr. ROLAND OLIVER, K.C., were constituted a Tribunal within the meaning of the Tribunal of Enquiries (Evidence) Act, 1921. Their position was, of course, wholly different from that of a court of justice trying a criminal case. There was no prosecutor, no accused, and no definite charge preferred. The Tribunal point out in their report that such evidence as the Treasury Solicitor had been able to obtain or as the Tribunal had thought fit to permit or require had been furnished, but that the testing of the witnesses' stories by cross-examination or otherwise had necessarily been undertaken by the members of the Tribunal themselves "with the resultant possibility of creating the impression that they were from the start hostile to some of the witnesses who appeared before them." Mention is also made of the fact that some, whose conduct was the subject of the closest scrutiny, were not represented before the Tribunal until some days had elapsed, and, in all cases, those who appeared to represent such persons were hampered by the inability to object to the reception of evidence in the nature of hearsay and prevented from presenting the case of their clients in the manner in which they would ordinarily have presented it before a court of law. The Tribunal have, it is stated, felt themselves entitled to use evidence once it has been given, whether or not it could strictly have been given in the case of the prosecution of an individual whose conduct has been under their consideration, but at the same time, when considering the case of any individual, they have put aside all evidence of a hearsay nature. The foregoing are cited as illustrative of some of the peculiar difficulties confronting the Tribunal and the delicate nature of its task. On the general position it is matter for satisfaction that a constitution such as ours, with all its theoretical imperfections and want of logical formulation, is yet able to provide without recourse to *droit administratif* or the faintest suspicion of executive bias for the setting up of a Tribunal such as this to perform a difficult task efficiently, swiftly, and with unchallengeable impartiality.

Scots and English Legal Systems.

IN his extremely interesting and illuminating lecture last week at King's College on the Inter-relation of the Scots and English Systems, Professor DEWAR GIBB, the occupant of the chair of Scots Law at Glasgow University, who is, moreover, a member of both the Scots and English Bars, sketched the early course of Scots law and touched on a variety of topics on which different views have been held north and south of the Tweed. Historically, as has been said, a secular hostility existed between England and Scotland during the formative period of the institutions of the two countries, the sympathies of the Scottish people being for centuries with the continent, to which they looked for the models of their law courts and the body of law there administered. Till comparatively modern days it was the practice of those destined for the Scots Bar to spend some time at the Dutch Universities, where they sat at the feet of the great civilians for the study of Roman law. Nowadays, recourse is not so frequently, as in the past, had to the doctrines of the civil law, and, indeed, as LORD MACMILLAN pointed out some time ago, "the scope for the employment of legal scholarship is fast disappearing, and the equipment most essential to professional success is an index to the statutes of the past twenty years, and a digest of the decisions pronounced upon them by an often bewildered court." As a perfervid Scot, Professor DEWAR GIBB is obviously not enamoured with the House of Lords as the ultimate appellate tribunal for Scotland. Certainly in the past Scottish lawyers had room for complaint, but in more recent times, with the infiltration of Scottish Lords of Appeal, the chief reason for dissatisfaction has disappeared. Now and again, certainly, in the Judicial Committee of the Privy Council, the Scottish element has been preponderant, and LORD MACMILLAN, who proposed the vote of thanks to Professor DEWAR GIBB, was able to assure him and the audience that, more than once within the past few years, intricate questions coming before that committee had been resolved by citation of passages from the great institutional writer on Scots law, LORD STAIR. Besides its other merits, the lecture had this in addition, that it was an eloquent

reminder to English lawyers that a separate system of law prevails at the northern end of the island which is deserving of more careful study than it has hitherto received in the south. The lecture is reported at p. 451 of this issue.

The Provision of Houses.

In dealing with problems associated with the elimination of slum conditions, the importance of providing dwellings at rents within the means of those displaced may easily receive too little attention, and, if in our treatment in these columns this part of the subject appears to have been somewhat neglected, the answer must be that we are concerned rather with the legal than the practical or sociological aspect of the matter. The significance of this part of the problem which may with justice be described as the *terminus ad quem* of all housing legislation, will, we think, justify a short reference to recent statements, reported in *The Times*, concerning the practicability of providing suitable accommodation at economic rents. Thus, Lord Elton, at a recent conference organised by the Housing Centre in London, adverted to the fuller and better organisation of the building industry and to the present cheapness of money rendering possible the production of the all-in 10s. a week house without any subsidy. Apart from the fact that firms were constantly hampered by the localism of building regulations, which were often a generation out of date, not enough technical information was, he said, either acquired or exchanged by building firms. Again, many bodies which had access to cheap money were either too small or too local to secure the savings on the technical side which were indispensable to low-cost building. All this, it was urged, pointed to the need for a fuller integration and co-ordination in the industry, thus attaining a happy mean between doctrinaire, bureaucratic nationalisation, and doctrinaire unregulated *laissez-faire*. Lord Dudley recently spoke of what he described as the remarkable change which came over people from slum dwellings when they were removed to new houses and amid attractive surroundings. Some of the latest schemes of flat and cottage development, which, as a member of the Housing Advisory Committee, he had seen in different parts of the country, were described as "magnificent," and as leaving nothing to be desired with regard to planning, finishing and fitment. The problem should not, it was urged, be tackled piecemeal. A block of flats lost its attractiveness if built in the middle of a slum. It was necessary to clear a big area and provide open spaces and gardens. Examples of what can be done under the existing housing legislation were taken from areas of sixty or seventy acres cleared in the middle of two provincial cities. Under modern building technique, the speaker indicated, it had been possible to pay as much as £25,000 an acre for sites and yet to build four-room flats which could be rented at 10s. a week, with public rooms, playing grounds, perambulator sheds, and public wash-houses. The local authority was the obvious body to deal with slum clearance, but it was essential that private housing associations which had proved their capabilities should have an opportunity of co-operating.

Protection of Buildings in Slum Clearance.

In the course of an address at the recent annual general meeting of the Society for the Protection of Ancient Buildings at which he presided, Lord Esher complained that the ample powers for the protection of ancient buildings contained in the Town and Country Planning Act, 1932, were not being used. Only a vigilant and outspoken public opinion would, he said, force local authorities to take action and assist the good intentions of the Ministry of Health. The vast movements of slum clearance were exhibited as containing elements of danger in the shape of indiscriminate clearance without consideration of the value of the buildings destroyed or for the possibility of their reconditioning. The Housing Act, 1935, it was said, made it possible for local authorities to save and recondition old houses, but there was plenty of proof all over England that that was not being done. A survey was urgently necessary for buildings worth preserving and the medical officer of health, whose responsibility it was to report on old houses, obviously needed the assistance of a trained architect. An interesting point alluded to by the speaker was the work of the windmill section, which had made substantial contributions to the repair funds of several of these structures, and whose progress was described as spectacular.

Motoring Offences.

The figures issued last week by the Home Office show a large increase in the number of motoring offences in England and Wales last year as compared with those for 1934. The total number of offences in 1935 increased by some 85,000, compared with that for 1934, speed limit offences rising by some 71,000. An increase of £64,520 in the amount imposed by fines and by 83,207 in the number of persons prosecuted are also recorded. During 1935 a total of 400,115 offences were dealt with by prosecution, 21,696 charges were withdrawn or dismissed, 341,852 convictions were recorded, 456 sentences of imprisonment without the option of a fine were passed, and 341,233 cases were dealt with by fine. During the same period 8,500 licences were suspended and 69,326 licences were endorsed. Fines for speed limit offences totalled £133,159. Sir John Simon recently intimated in answer to questions addressed to him in the House of Commons that during last year the total number of convictions resulting from all charges of exceeding a speed limit was 108,571. As a result of these convictions 246 driving licences were suspended and 57,103 licences were endorsed. During the same period, charges of careless driving resulted in 19,482 convictions, the suspension of 1,025, and the endorsement without suspension of 8,081 driving licences.

Road Fund Grants.

The Secretary of the Ministry of Transport has recently sent to local authorities a circular letter in which certain changes in the system of distribution of Road Fund Grants for built-up areas are indicated and explained. In response to representations to the effect that the existing practice of including only the site value of property for the purpose of calculating the amount of grants operates inequitably and militates against the carrying out of necessary improvements in cities and towns, the Minister of Transport has decided to accept as ranking for grant the net cost of property necessarily acquired and used for approved schemes of road improvement. At the same time, he considers that the rates of grant to be given on the more comprehensive basis should be somewhat lower than those hitherto obtaining on site value basis. For trunk roads in county areas in relation to schemes according with approved trunk road standards the percentage of approved net cost for Groups A, B and C will be 88, 75 and 66⅔ respectively in built-up areas. For the same groups—these are determined by reference to the ratio of the weighted to the actual population of its area as determined by the formula of the Local Government Act, 1929—in the case of Class I (other than trunk) roads the percentages are 66⅔, 60, and 50 where dual carriageways and cycle tracks are in question, the last figure applying also to other improvements. For Class II and unclassified roads, 33⅓ per cent. is to be allowed. Corresponding figures for areas not built up are 85, 80, 75, 75, 66⅔, 60, 60 and 50. It is stated, however, that for schemes of exceptional magnitude and traffic importance in built-up areas, which an authority is prepared to deal with expeditiously and carry to completion as an urgently needed traffic facility, the Minister will be prepared to consider grants at the rates applicable for similar works in an area not built up. These exceptional terms will only be given in cases of specially selected schemes which, in the Minister's view, fulfil the above conditions. The Minister will also be prepared to consider

grants at the higher rate where the construction or reconstruction of publicly owned bridges in built-up areas is concerned if the acquisition of property does not involve substantial expenditure. Grants at the rate of 75 per cent. will continue to be given for the reconstruction of privately owned weak bridges and for the elimination of level crossings, while the expenditure ranking for grant will now include in all cases the approved net cost of property. The terms of the circular will be applicable to schemes for which grants have been or may be issued since 31st December, 1935.

Road Improvements.

INTERESTING particulars were given in the House of Commons recently by Mr. HORE-BELISHA concerning the five-year road programme. The total estimated cost of schemes submitted by local authorities up to 30th April was, he said, £139,729,000. The cost of schemes approved for grant in the first year (1935–36) was £26,650,000, in respect of which payments amounting to £1,654,323 had been made out of the Road Fund for accounts actually presented. It was estimated that the corresponding figure for the present year would be £4,820,000. Rates of grant, it was indicated, vary from 33⅓ per cent. and 85 per cent. It was stated that the programme submitted exceeds in magnitude any of its predecessors and that a variation of the grants on which it was based, so far from accelerating, would, by creating indecision, retard progress. Asked whether he would give an assurance that the proposal to merge the Road Fund in the general Exchequer would not have any adverse effect on these schemes, the Minister of Transport referred to the undertaking to that effect already given by the Chancellor of the Exchequer. It is thought that the completion of the scheme for the erection of pedestrian guard rails along a three-mile stretch of the East India Dock Road, Poplar, can be referred to under the heading as a "road improvement" with some confidence. On the formal completion of the scheme about ten days ago, the Minister of Transport drew attention to the fact that the length of road selected for the provision of these rails was one along which 260 pedestrians were killed or injured in a year. Guard rails which permitted the pedestrian to cross the road only at regular crossing-places were an attempt to promote the safety of the pedestrian on the one hand and the freer flow of traffic on the other. Beacon crossings could never fulfil their purpose until all pedestrians used them whenever they were available in preference to other parts of the carriageway. Guard rails, he said, would conduce to the more general use of pedestrian crossings and by physical necessity create a practice which seemed psychologically difficult. Reference was made also to the large proportion of accidents caused by running into the carriageway without looking, or just absent-mindedly stepping into it, and the hope was expressed that all highway authorities would watch the results of the enterprise in question.

Tithe Bill: Committee Stage.

A NUMBER of interesting points raised when the earlier clauses of the Tithe Bill were considered by a Standing Committee may be shortly alluded to. The first eight clauses have now been ordered to stand part of the Bill, in some cases with drafting amendments, and the Committee stands adjourned until 11th June. An amendment which would have given statutory effect to informal apportionments arrived at before the appointed day—cl. 10 provides that the Tithe Redemption Commission shall have regard to such arrangements—was withdrawn. It was explained in support of the proposal that when fields had been sold for building informal apportionments of rent-charge were often made by auctioneers or between landowners. Mr. ELLIOT said that the proposal might lead to much difficulty and a whole series of disputed cases. Under the Bill a mixed unit of land fell into the agricultural category, the benefit of the doubt being given to agricultural land. Whether the solution in the Bill was right or wrong, it was certainly clear, and the Minister of Agriculture and Fisheries intimated that if the tithe owner went too deeply into this matter he might jeopardise the benefits he would receive under the Bill. From all points of view the tithe owner would, he said, be well advised to accept the Government's unambiguous solution of the difficulty. Another amendment, also withdrawn, was the first of a series designed to make the charge fall separately on agricultural and non-agricultural land in mixed units. The Minister said that to require the Tithe Redemption Commission to carry out new apportionments in 80,000 cases before next April was to throw on its shoulders an impossible task. By making the concession that urban land should be differentiated from rural land, he had introduced an element of administrative difficulty into the scheme, but he begged the Committee not to count on that concession to burden the Commission with a task which would be administratively impossible. He intimated, however, on being pressed further that the apportionments need not be completed by April, the necessary adjustments being capable of being effected later, that he would examine the matter further to see if any practical solution could be found.

Composition of the Commission.

A POINT involving wider issues was raised by an amendment to the effect that appointments to the Tithe Redemption Commission should be made by a resolution of the House of Commons. A provision to this effect would, it was contended, keep control in the hands of Parliament and would eliminate the possibility of the appointment of interested persons. Mr. SPENS deprecated the possibility of any Member of Parliament having anything to do with the appointment of the Commission. In that event, he said, they might be asked by their constituents to vote for people who were known to have sympathies one way or the other, and members might be placed in a most invidious and unpleasant position. Mr. ELLIOT pointed to the much greater chance of "sound party men" being appointed if the amendment were accepted, and indicated the nature of the Parliamentary control which would exist if the method of appointment provided by the Bill (i.e., by the Treasury, after consultation with the Minister of Agriculture) stood. The Minister, he explained, would be subject to Parliamentary criticism and the expenses of the Commission would be borne on the votes, which would give an opportunity for Parliament to review the work of the Commission. The amendment was negatived without a division. The same speaker replying to the suggestion that it would be an advantage to tithe-payers if the period of redemption were 100 years, instead of sixty, as provided by the Bill, claimed that the prolongation of the period would bring no additional relief to those who paid tithe on heavily tithed land, who were most in need of relief. To them it would mean simply an almost indefinite prolongation of the burden. The shortening of the period to sixty years would quickly begin to reflect itself in the total burden on the land. If the period of any other charge on land were reduced from perpetuity to sixty years the owner would certainly feel that something had been put into his pocket. It will be remembered that the government scheme set out in a Command Paper and issued contemporaneously with the Royal Commission's Report extended the period of extinguishment from forty years, provided by the latter, to sixty years.

Recent Decision.

In *Commissioners of Inland Revenue* v. *Pearson; Same* v. *Pratt* (*The Times*, 29th May), the court reversed decisions of the Special Commissioners and held that where dividends were paid without tax having first been deducted the proper return for sur-tax purposes were the amounts actually received *plus* income tax at the standard rate for the time being in force.

Lord Darling.

Although thirteen years have elapsed since Lord Darling retired from the Bench, we were periodically reminded by his intervention in discussion, sometimes with witty comment, at other times in graver vein, that his interest in public affairs had suffered no diminution. Now comes the announcement of his passing, bringing with it the sad reflection that no longer shall we be given those merry quips and jests of which he possessed an abundant supply, for he was a firm believer in the truth of Horace's dictum that "joking decides great things stronglier and better oft than earnest can." Holding a unique place in the ranks of the English judiciary, he will long be remembered as possessing in happy combination wit and wisdom with which to season the dullness of wearisome litigation, making those qualities serve at the same time as valuable contributions to the subject under debate.

There were, of course, those who regarded Lord Darling's jocular propensities on the Bench as out of place, those austere critics forgetting, if they ever knew, that wise remark of Chief Justice Erle, who, when counsel apologised for a sally of wit which set the court laughing, said "The court is very much obliged to any learned counsel who beguiles the tedium of a legal argument with a little honest hilarity." His critics were also accustomed to suggest that his "impromptus" were carefully manufactured to be ready to be fired off at the psychological moment. It may be that in looking through the papers in a case a witty observation or apt quotation from the rich store of English literature which he possessed might suggest itself, but as to many of his happiest interventions they could not have been rehearsed. One of these, a singularly apt and witty remark, recurs to the memory of the present writer. It happened in this wise, in the days when Revising Barristers were still in existence and perambulating the country during the long vacation settling the electoral rolls. An appeal from one of these functionaries came before a Divisional Court of which Mr. Justice Darling was a member, and counsel for the appellant was vigorously impugning the Revising Barrister's decision. In doing so he maintained that the Revising Barrister had gone much too far on points not germane to the question involved, thus forgetting the familiar maxim that the cobbler should stick to his last. Upon this Mr. Justice Darling quietly remarked that the maxim in question had no application in the case of persons exercising judicial functions, it applied only to "sutors." Again, when sitting as a member of the Court of Criminal Appeal and listening to an argument which sought to justify the cross-examination of a prisoner as to character on the ground that he had called the prosecutor a liar, and had thus made an attack upon him, Mr. Justice Darling rejected the contention, remarking that the prisoner only said, under the stress of cross-examination, of one man, what the Psalmist had predicated of all men. In an earlier case where a rule had been obtained calling upon the Bank of England to disclose certain documents which the applicant for the rule declared would show that he was entitled to certain dormant funds, the learned judge in discharging the rule said that no useful purpose would be served by making it absolute, "except the removing of a hallucination from a person suffering from it, and the court could not issue writs of mandamus simply to cure people of hallucinations." Occasionally it might happen that he would become slightly bored during a severely legal discussion which in his view was unnecessary. Once, while sitting with Mr. Justice Scrutton, and the latter was drawing illustration after illustration from shipping law which apparently Mr. Justice Darling considered not germane to the matter in dispute, at last he said with regard to them, "We never had any ships on the Oxford Circuit."

Besides his activities as a judge, the late Lord Darling found time to make various contributions to literature both in prose and in verse, and of everything he wrote it might with truth be said, as Dr. Johnson said of Goldsmith, that he touched nothing which he did not adorn. His little volume "Scintillæ Juris" is packed with a rich store of gnomic wisdom and of satirical hits of surpassing sharpness. Thus, in the section devoted to International Law he states for the convenience of those "who have in their law libraries only the ten commandments and perhaps some odd volumes by Grotius or Puffendorff," what international law in its integrity is, namely, "La raison du plus fort est toujours la meillure"; in the section on witnesses he pokes fun at the experts, and gives it as his opinion that women are invariably angry in the witness box, "for the rules of evidence happen to be peculiarly repressive of feminine conversation"; on cross-examination he suggests that "a compliment is a forensic anæsthetic." The like vein of satire runs through his later volume, "Meditations in the Tea Room," where we find him laying it down that "what most recommends party government is that it enables us to slander our rulers without sedition, and overthrow them without treason." His volume of verse, "On the Oxford Circuit," enshrines in exquisite language the striking incident when Mr. Justice Talfourd passed away in the act of charging the grand jury and recommending a deeper sympathy between the rich and the poor. By these writings and by some of his happiest judgments on the Bench the memory of the distinguished judge will be kept alive.

Solicitor's Rights to terminate Retainer.

When is a solicitor, engaged under *a general retainer and not merely for the conduct of an action*, entitled to discharge himself during pending proceedings and to recover the costs for the work that he has done?

There are several "good grounds" (see Cordery, "Law relating to Solicitors," 1935, 7th ed., p. 133), including "the client's refusal to supply the solicitor with necessary funds unless he (i.e., the solicitor) undertook the action on a different basis" (*ibid.*).

A good example is to be found in the recent case of *Warmingtons* v. *McMurray* (1936), 52 T.L.R. 381 (reported at page 446 of this issue), in which Goddard, J., made some useful observations.

Mrs. M, a rich widow, consulted the plaintiffs (who are solicitors), in 1933; she had "fallen among thieves." W, on her behalf, recovered judgment against C, one of these men, for £1,500. Meanwhile C secured an interview with Mrs. M, and, without the knowledge of her solicitors, persuaded her to end further litigation then pending, and also his bankruptcy proceedings, and to refer matters to arbitration, in which each party should bear their own costs, including the costs incurred in the previous proceedings. "It speaks well for the plaintiffs," said the learned judge, "that they did not immediately retire from representing her." They did the best for her in that arbitration and in six months recovered for her other substantial sums. In March, 1935, they delivered her a bill of costs and a cash account, showing a balance in their favour of £617.

Mrs. M made promises to pay, but paid nothing, and the arbitrators, meeting in April, ordered fresh pleadings, and the proceedings had to be recast in view of her agreement with C.

W, accordingly, in the end, refused to continue to act for her in the arbitration unless their first bill were paid. She took further advice and offered to provide funds for outstanding disbursements but stated that she could not pay W anything on account of their charges until she had received funds from America, which she was daily expecting.

W, therefore, discharged themselves from their retainer, delivering a second bill of £814, of which £744 was in respect of the arbitration.

They sued her to recover the amount of both bills.

1. Now the contract of a solicitor who accepts a retainer in *a common law action* is laid down by the Court of Appeal in *Underwood, Son & Piper* v. *Lewis* [1894] 2 Q.B. 306. It is an entire contract to conduct an action to the end—in the absence of agreement to the contrary. There are "recognised exceptions."

> "The solicitor is entitled, if he thinks right, to ask his client to find money for necessary disbursements; and, if the client fails to do so, the solicitor is entitled to say that he cannot act for the client further . . . But . . . in such a case a solicitor cannot throw his client over at the last moment, and . . . he must give him reasonable notice of his intention to do so": per Lord Esher, M.R., at p. 311.

2. Goddard, J., justly points out, in the case under review, that the principle of "one entire contract" is not applicable only to the relationship of solicitor and client, but is part of the law of contract. An entire consideration requires an entire performance. He also refers to Sir George Jessel, M.R.'s, judgment in *Re Hall* v. *Barker* (1878), 9 Ch. D. 538, who differentiates the principle of discharge from a retainer in an action at common law from that in a *Chancery action*, which may involve many proceedings, each, in effect, self-contained, and extending over a long period of years. That great judge gave these homely illustrations of what is an entire contract:—

> "If a man engages to carry a box of cigars from London to Birmingham, it is an entire contract, and he cannot throw the cigars out of the carriage half-way there and ask for half the money; or if a shoemaker agrees to make a pair of shoes, he cannot offer you one shoe and ask you to pay one half the price" (at p. 545).

See also *In re Romer and Haslam* [1893] 2 Q.B. 286, on litigation other than an action at common law.

So, in the case under review, Goddard, J., said:—

> "If the client fails to put the solicitor in funds for counsel's fees and other disbursements, that is a good reason for the solicitor declining to proceed. He does not undertake to finance his client and the latter impliedly promises to keep him in funds for disbursements" (at p. 382 of 52 T.L.R.).

This, of course, does not mean that a solicitor is entitled to demand part of his profit costs as the case proceeds. If the client, however, declared himself insolvent or intimated that he would refuse to pay, this would be a repudiation of the contract by the client and the solicitor would be entitled to discharge himself.

3. In the present case Mrs. M had not refused to pay or repudiated her contract. But this was not a case of a specific retainer in an action or an arbitration. *The retainer was a general one*, viz., to get Mrs. M out of her difficulties, which might involve actions, proceedings and summonses "extending perhaps over years."

> "To employ a solicitor to conduct an action is one thing; to employ him generally to get you out of your difficulties . . . is another."

Hence this was not the case of an entire contract, but rather "a series of services . . . in relation to a succession of matters" (p. 383), within the principle of *In re Hall* v. *Barker*, *supra*, where the proceedings arose out of a bankruptcy:—

> "It is not reasonable that a solicitor should engage to act on for an indefinite number of years, winding up estates, without receiving any payment on which he can maintain himself" (at p. 545 of 9 Ch. D.).

In *Re Romer and Haslam*, *supra*, the proceedings had been a protracted arbitration; the award had been remitted to the arbitrators for reconsideration; there were four bills of costs amounting to four figures, and it was held that the heads there were equivalent to "the conclusion of a definite and distinct part of the proceedings," which could be separately charged for and for which payment could be separately demanded.

4. The old cases on the subject are tersely reported and some of them deserve at least a cursory glance.

There is *Rowson* v. *Earle* (1829), Mood. & Mal. 538, where an attorney, after handling a matter for two years, until the decree—it was in Chancery—gave notice that he would give up the papers for want of funds, which, in fact, he did. Lord Tenterden, C.J., directed a verdict for the plaintiff in *assumpsit* on his bill of costs.

Then, in *Hawkes* v. *Cottrell* (1858), 3 H. & N. 243, which involved a suit for the execution of the trusts of a settlement, and a subsequent request for £80 or £100, whereupon the solicitor would proceed, Martin, B., asked in argument:—

> "Must an attorney, retained in a Chancery suit which may last many years, wait till it is finally wound up before he can recover his charges? Is it not rather a question of fact what is the understanding of the parties?" (At p. 244.)

The point in *Lawrence* v. *Potts* (1834), 6 C. & P. 428, must often, even to-day, prove of practical moment. The costs were incurred in conducting an action of ejectment in which the sanity of the defendant's father (who had made a will and bequeathed his property away from the defendant), was in issue. The plaintiff conducted the case until the time arrived for delivering briefs. He had several times, between April and October, requested money on account; and not having received any, he withdrew from the matter. It was said that the attorney had no right to stop at the threshold of the hearing. True, he cannot "at a pinch" refuse to carry on his client's case without a further advance. But here there was sufficient notice.

> "An attorney," said Tindal, C.J., "has a right to say, 'I will not be your banker for all expenses.' He has a right to refuse to go on without funds, provided he does not do it in a hurried manner, and take his client by surprise, when he has no time to make provision" (at p. 430).

A case always cited in this connection is *Whitehead* v. *Lord* (1852), 7 Ex. 691. In 1835, an administratrix retained the plaintiff. In 1840 a bill was filed to make certain persons, who were next-of-kin, parties. In 1851, the administratrix died, and the defendant took out letters of administration, whereupon the plaintiff gave notice that unless £30 were paid to him for his costs he would cease to act as solicitor. The plaintiff in the action claimed £68, being his costs till 1840. Platt, B., said:—

> "There is no doubt that an attorney, who has been retained to conduct a suit, cannot stop in the middle of it; and, as he has taken upon himself a certain responsibility, he is bound to fulfil it, but his client is equally bound to furnish him with funds necessary for the purpose, if he requires them" (at p. 695).

The last case which need be mentioned is the first in importance, upon which the dicta in the two Court of Appeal cases and others, are based: *Harris* v. *Osbourn* (1834), 2 Cr. & M. 629.

Lord Lyndhurst, C.B., there laid down the principle:—

> "I consider that when an attorney is retained to prosecute or defend a cause, he enters into a special contract to carry it on to its determination. I do not mean to say that, under no circumstances, can he put an end to this contract; but it cannot be put an end to without notice" (at p. 632).

And finally, Parke, B., gave the historical basis for the rule:—

> "In ancient times it was considered as an entire contract, of which the attorney could not divest himself by any means; but, in consequence of the increased expenses of suits in modern times [*sic*] the rule has been varied, and the attorney is at liberty to determine the contract on reasonable notice."

And this was a century ago!

Mr. Frederick Adam Stigant, solicitor, of Chatham, Kent, left £29,081, with net personalty £21,866.

Company Law and Practice.

Private Examination under s. 214, Companies Act, 1929.

SECTION 214 (1) of the Companies Act, 1929, provides as follows :—

"The court may at any time after the appointment of a provisional liquidator or the making of a winding-up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the promotion and formation, trade, dealings, affairs or property of the company."

The section then goes on to provide that the court may examine such a person on oath, either by word of mouth or on written interrogatories, and may require him to produce any books and papers in his custody relating to the company. The provisions of the section are by virtue of s. 252 of the Act equally applicable to a voluntary winding up.

The usefulness of these provisions needs no explanation. Speaking generally, they enable information to be obtained which will determine the course to be pursued in regard to a question or claim which has arisen in the winding up. As the result of a particular examination the liquidator may be in a position to decide whether proceedings for misfeasance should be brought ; or he may be able to discover the whereabouts or financial position of a contributory or ascertain the true circumstances in which a member of the company obtained or transferred his shares. It will be observed that the net cast by the section is very wide ; it covers any officer of the company, any person known or suspected to have property of the company in his possession, any person supposed to be indebted to the company, and, finally, any person whom the court deems capable of giving information concerning the company. The description of the last class of person would seem indeed to give the court power to summon for examination anybody it wished, for the sole condition is that the court should deem him capable of giving information. But it must be remembered that the making of the order is a matter for the discretion of the court ; it is not a matter of right merely because the liquidator or a creditor or contributory should choose to apply. The power is exercisable for the purposes of the winding up and for the benefit of those interested in the winding up, and the court must be satisfied that the order will be just and beneficial and not sought for the purpose of vexation and oppression (see *In re Metropolitan Bank : Heiron's Case*, 15 Ch. D. 139 ; *In re Imperial Continental Water Association*, 33 Ch. D. 314). In *In re North Australian Territory Company*, 45 Ch. D. 87, Bowen, L.J., said that the power is "an inquisitorial power which may work with great severity against third persons, and it seems to me obvious that such a section ought to be used with the greatest care, so as not unnecessarily to put in motion the machinery of justice when it is not wanted and certainly not to put it in motion if unnecessary mischief is going to be done or hardship inflicted upon the third person who is called upon to appear and give information."

But once the discretion has been exercised and an order made under the section it is extremely difficult to get that order reviewed by a superior court. Indeed, in *In re Gold Company*, 12 Ch. D. 77, the Court of Appeal expressed the opinion that a person summoned to be examined has no *locus standi* to appeal against the order directing him to attend for examination, and Jessel, M.R., said the person so summoned is not more nor less than a mere witness, like a witness in any other case. So, too, in *In re Silkstone and Dodsworth Coal and Iron Company : Whitworth's Case*, 19 Ch. D. 118, the same learned judge said that the only possible ground for an appeal would be that the judge had no jurisdiction to order the witness to attend. Nevertheless, in *In re North Australian Territory Company, supra*, Cotton, L.J., said that "it seems to me it would be wrong to say, when a person is examined not as a witness in an action but for the purpose of giving information to the liquidator of a company, that if that order is wrongly made the person so summoned to be examined and give information cannot appeal to the court to know whether that order has been properly made or not" ; and Bowen, L.J., adverting to *In re Gold Company, supra*, said he would be loth to conclude that the witness has not a *locus standi* to complain that the order is oppressive. Moreover, in *Heiron's Case, supra*, the Court of Appeal reversed an order which had been made on a wrong principle, viz., that the order is a matter of right. But at least it is clear that, *primâ facie*, the Court of Appeal will not interfere where the judge has exercised his discretion, though probably it will interfere where there has been a serious miscarriage of justice or a wrongful exercise of the discretion (see *In re Joseph Hargreaves Limited* [1900] 1 Ch. 347).

In the majority of cases the application for the order is made by the liquidator, and he may apply by *ex parte* summons and upon a written statement without an affidavit—the object being to keep the proceedings secret from the person sought to be affected. It is not necessary to make out a *primâ facie* case—the probability of a case is enough. "A fair suspicion may well be worthy of further investigation and it may well be worth the expense and trouble of examining witnesses to see whether it is well founded. It is not necessary that the applicant should establish his case before he applies to the judge ; he may say to the judge : 'I have a strong ground for suspecting that a certain transaction was fraudulent ; if it is proved to be so, we shall get a large sum of money ; will you let me lay out a small sum of money in order to examine a witness or two, so as to ascertain the facts ?' In that case the court will exercise a discretion" (per Jessel, M.R. : *In re Gold Company, supra*).

A contributory may make the application, though he must give notice to the liquidator, for the latter is entitled to institute the proceedings himself instead of the contributory. If he decides not to do so, the court may authorise the contributory to proceed. Moreover, even where the liquidator is examining, the judge may in his discretion authorise a contributory to examine as well (*Whitworth's Case, supra*).

It will, I think, be of some interest to see the different persons whom the court has from time to time summoned to give information under the provisions of what is now s. 214 of the 1929 Act. Apart from the ordinary case of an officer of the company being summoned for examination, the cases show that those who are in a position to give information as to the circumstances or financial position of a contributory can be ordered to give evidence ; for such information—where there is a liability on the contributory—is information concerning the estate or effects of the company, and is sought for the purpose of increasing its assets. Thus the relatives of a contributory have been summoned to give evidence as to a missing contributory's whereabouts ; indeed, in *Fricker's Case*, 13 Eq. 178, an order was for this purpose issued for the examination of a mother-in-law—which suggests that a legal basis may perhaps be forthcoming for the legendary antipathy which exists in the case of such a relationship. Again, the manager of a bank where the contributory has an account can be examined as to the property of the contributory (*Bloxam's Case*, 36 L.J. Ch. 687 ; *Druitt's Case*, 14 Eq. 6). Even a person indebted to a contributory can be summoned (*Trower and Lawson's Case*, 14 Eq. 8).

Another class of case in which examination has been ordered is where the circumstances attending a transfer of shares, e.g., to an infant or nominee, require investigation, since the result may be to enable the liquidator to fix liability upon someone other than the person whose name appears on the register as the holder of the shares. Thus in *Clement's Case*, 13 Eq. 179 (n), a broker who had acted for an infant on a transfer to

him of shares was summoned to give evidence. Lord Cairns said that the shares and the liability upon the shares formed part of the estate and effects of the company, and further that the circumstances in which the shares had been entered on the register in the infant's name might well be taken to form part of the "dealings" of the company (see, too, *Ex parte Carter*, 40 L.J. Ch. 15). Again, in *In re Smith Knight & Co.*, 4 Ch. App. 421, where shares had been transferred by A to B without consideration, B accepting the shares at X's request and X supplying money for payment of calls, X's bank manager was summoned to give evidence as to X's affairs. There are other examples in the reports of persons who have had direct trade dealings with the company and have been required to attend for examination, but these, I think, are not deserving of special mention as they seem to me to fall directly within the words of the section.

Only in one case so far as I have been able to discover has a "class" of person been held not to fall within the section. In *In re Accidental and Marine Insurance Corporation*, 5 Eq. 22, Stuart, V.-C., held that a creditor under an insurance policy was not a person to be examined under the section, and expressed the opinion that it is impossible to hold that a mere creditor is within its scope. Certainly, where the relationship between the company and the person sought to be examined does not extend beyond that of creditor and debtor, it may well be that the creditor cannot give information concerning the company's affairs, though I do not think that in any particular case the court would consider itself bound by that decision to hold that it cannot "deem" the creditor capable of giving such information; and it will not so hold where there are other facts besides the debt in respect of which information may be forthcoming (*Re Tyne Chemical Company*, 43 L.J. Ch. 354). And it would, I think, be difficult to say that a secured creditor cannot be deemed capable of giving information about the property of a company.

There are, however, as I have indicated, cases in which an order summoning a witness for examination has been discharged on the ground that the jurisdiction has been exercised on a wrong principle, or that the application was vexatious and oppressive. Thus in *Heiron's Case, supra*, the liquidator had brought an action against a director of the company and had exhibited interrogatories which the director had answered; the liquidator had then sought to enforce further answers, but the judge held the director had sufficiently answered. The liquidator then sought to examine the director under what is now s. 214; the Court of Appeal held that such an examination was vexatious and should not be ordered unless the liquidator could make out a very strong case for further examination. So, too, in *In re North Australian Company*, 45 Ch. D. 87, the liquidator had brought an action against X company in which he had sought to examine the company's secretary on interrogatories, which the judge had held in the circumstances to be premature. The liquidator then obtained an order to examine the secretary under what is now s. 214, and in this examination the secretary refused to answer a question with reference to the subject-matter of the action. The Court of Appeal held that he was justified in so refusing, the reason for the question was simply to assist the liquidator in his action and thereby evade the order of the judge postponing interrogatories; and the section could not be used to get "by a side wind" discovery which the judge had thought it premature to give. These are rather special cases, however, and generally speaking the net cast by the section is, as I have suggested, so wide as to afford little chance of escaping to a person who has had any sort of transaction with the company.

In the annual golf match between the Bench and Bar of England and the Bench and Bar of Scotland, at Muirfield, last week-end, Scotland gained a narrow victory, with a total of seven matches to six on the two series of foursomes.

A Conveyancer's Diary.

Restrictive Covenants in Leases—Meaning of "Expiration of Fifty Years of the Term" in L.P.A., s. 84.

A SHORT but important point was decided recently in *Earl Cadogan* v. *Guinness* [1936] W.N. 131. The question arose upon an application for modification of restrictive covenants under s. 84 of the L.P.A., 1925. That section applies, of course, mainly to restrictions affecting freehold land and enables such restrictions to be removed or modified upon an application to the authority mentioned in the section. I need not enter into the grounds of the application or the method of it, for the present purpose it is sufficient to point out that whilst generally applying, as I have said, to freehold land, it is provided in sub-s. (12) as follows:—

> "Where a term of more than seventy years is created in land (whether before or after the commencement of this Act) this section shall after the expiration of fifty years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold."

In the case referred to the facts were that the plaintiff, Earl Cadogan, was the estate owner in fee simple in possession of houses in Cadogan Square subject to building leases for terms of ninety-nine years or eighty years. The defendants were lessees or under-lessees for these terms or for sub-terms. The summons was taken out under Ord. LVIA, r. 1A, to determine whether on the true construction of sub-s. (12) of s. 84 any, and if so which, of the houses came within the section. The leases were granted under building agreements at various dates between 1885 and 1892, but all were expressed to be for a term of ninety-nine years from 25th March, 1874, except a few which were expressed to be for eighty years from 25th March, 1883. The defendants had applied to the authority under s. 84 for a modification of the restrictive covenants in their leases. The plaintiff contended that the authority had no jurisdiction to entertain the application on the ground that in no case had fifty years of the term expired at the date of the application.

In short, the question was what was the proper date of the commencement of the terms within the meaning of s. 84 (12). Did the terms commence, for that purpose, from the respective dates of the granting of the leases or from the anterior date from which the terms were expressed to be computed?

Clauson, J., held that although (as his lordship said) it was common to find in the creation of leasehold interests that the term was expressed to run as from a considerably earlier date than the actual date of the lease, it was impossible by deed to create a term which should exist before the date of the deed, and consequently, for the purpose of s. 84 (12), the expression "the expiration of fifty years of the term" meant the expiration of fifty years from the date of the lease and not from any earlier date as from which the term was expressed to run.

The only thing that surprises me about this case is that anyone should have been found to contest it.

Receipt endorsed on Mortgage. Name of Payer not Stated.

I have been told of a point which arose recently in practice, but was overcome somehow by arrangement. It is, I think, of general interest.

Take the case of a mortgage to a limited company for a large sum upon property of considerable value which is settled land, and part of which is being offered for sale by the tenant for life. There is a receipt endorsed upon the mortgage stating that all sums of money payable thereunder have been paid, but the receipt does not state by whom the money has been paid and, incidentally, is unstamped.

A purchaser of a part of the property from the tenant for life calls for proof that the mortgage money was paid out of capital money in the hands of the trustees of the settlement available for the purpose. The vendor refuses to supply the information asked for and states that he has been advised by counsel that he need not comply with the purchaser's request on the following grounds: (1) that the money secured by the mortgage having been paid off, the mortgage term ceased as a satisfied term under s. 116 of the L.P.A., 1925; (2) that if the mortgage had been paid off by a limited owner, that owner could only have a limited owner's charge; (3) that if the charge had been paid off by some other person, that person could only have a general equitable charge; and (4) that, in either case ((2) or (3)), the charge would be overreached by a sale by the tenant for life (whether the charge was or was not registered as a general equitable charge) under the S.L.A., 1925, s. 72 (3) (*b*).

I am not so sure that the vendor's contentions are well founded.

Firstly, I think that the receipt endorsed is not evidence of payment and cannot be used as such, not having been stamped. This is an important point and may cause serious trouble to the purchaser if he should wish to mortgage or to sell. It seems to be thought that there is no need to stamp a receipt which is intended to operate as a discharge of a mortgage. That I think is a mistake. By s. 115 of the L.P.A., 1925, it is enacted that a receipt endorsed "which states the name of the person who pays the money" will operate as a surrender or discharge or transfer, as the case may be. That section only applies where the name of the person paying the money is stated in the receipt and under sub-s. (5) is liable to the same stamp duty as if it were a conveyance under seal. It may be that the effect of that is that where the name of the person paying the money is stated, the receipt may, for stamp duty purposes, be regarded as a reconveyance or transfer, as the case may be, and so be capable of being stamped at any time upon payment of the duty and the penalties imposed by the Stamp Act. But in the case which I am supposing the receipt does not state by whom the money has been paid, and consequently s. 115 does not apply. Then we must turn to s. 116, which reads—

> "Without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise a mortgage term shall where the money secured by the mortgage has been discharged, become a satisfied term and shall cease."

Now, it seems to me, upon the stamp duty point, that the receipt is not capable of being stamped at all after a month from its date, even by payment of the penalty, and that it is therefore not admissible in evidence to show that the mortgage money has been paid. That is the effect of the Stamp Act, 1891 (see ss. 14 (1), 14 (4), 101 (2) and 102 of that Act). I think, therefore, in a case such as I have mentioned, the absence of any stamp upon the receipt is fatal.

There are, however, other objections which I should have to accepting the title.

I do not think that it is true to say that a limited owner paying off a charge would only have an equitable charge upon the property. He would be entitled, in my view, to have a transfer of the mortgage if he so desired, and also if the payment had been made by a surety he would not only have a charge but be entitled to a transfer. I think, therefore, that a purchaser, in such circumstances, would be entitled to require evidence that the mortgage money had been paid off out of capital money in the hands of the trustees of the settlement and properly applicable for the purpose. I do not see how it can be said that the mortgage debt is discharged and the mortgage term become satisfied if there is any person who is entitled to call for a transfer of the debt and the term by which it is secured.

Landlord and Tenant Notebook.

Covenants affecting External Alterations.

A NUMBER of interesting points have been dealt with and fine distinctions drawn in a group of four cases decided during the present century in which the tenant's right to carry out external alterations has been in issue.

First came *Bickmore* v. *Dimmer* [1903] 1 Ch. 158, C.A. The plaintiff had let the premises to a piano manufacturer, who assigned in breach of covenant to the defendant, a watchmaker and goldsmith. Proceedings were taken, but compromised: the defendant undertaking not to use the demised premises for any business other than that of a watchmaker, etc., and to observe the covenants. The complaint was that he had affixed to the outside a large two-faced clock "like a drum" as an architect witness, called for the plaintiff, described it; in breach, it was alleged, of a covenant not to "make any alteration to the premises." The bolts connecting it to the structure were driven six inches into the wall. On one side was the legend "Dimmer, Goldsmith," on the other "Dimmer, Watchmaker." It was held that the covenant was not broken. Cozens-Hardy, L.J., was pretty scathing, observing that the interpretation contended for would prevent the tenant from changing wallpaper, fixing gas-brackets or putting in electric light. And all three judges observed that the advertisement was one which related to the business to which the tenant was restricted.

Next was *Joseph* v. *London County Council* (1914), 111 L.T. 276, in which the position was rather less simple. The plaintiff as assignee of an 80-year building lease was under covenants not to make alterations to the elevation or architectural decoration of the property without the consent of the lessors, the defendants, and not to do anything involving danger or annoyance. He took out an originating summons to have it decided whether a large framework of iron, intended to hold electric light signs, resting on cornices and fixed to, but not driven into ornamental stonework, but easily removed, would constitute an infringement of these covenants. Astbury, J., proceeded to examine the question whether the lease contemplated preservation of appearance or merely of material. He consulted dictionaries for light on the meaning of "elevation" and found that it meant plans on a vertical plane; only one work extended the connotation to "front view." He then subjected the term "alteration" to inquiry, but not by means of dictionaries; he referred to *Bickmore* v. *Dimmer* for authority, but found that the covenant in that case (1) dealt with alterations only, and (2) did not deal with the subject-matter in respect of which alteration was prohibited. But using, as did Cozens-Hardy, L.J., the *reductio ad absurdum* method, his lordship pointed out that if appearance were aimed at, the covenant would actually prevent the lessee from placing window-boxes or fixing sun blinds. Accordingly, he held that it was the fabric of the building that was protected, and there was no substantial interference with this. Then in *London County Council* v. *Hutter* [1925] Ch. 626, Tomlin, J. (as he then was) had before him the case of a similar electric light advertisement frame which, however, had been secured by bolts driven into the wall and removal of part of the moulding. Three covenants were relied on by the lessors; a covenant not to cut or maim walls, a covenant against damage and waste, and a covenant against altering the elevation. His lordship held that all three had been broken. The fabric of the building had been cut; the structure was damaged; and there was an appreciable interference with the elevation, taking that to mean the same as was held in *Joseph* v. *London County Council*. As to *Bickmore* v. *Dimmer*, the importance of contemplated user now became marked. For, unlike the defendant in that case, the lessees proposed to let out the advertisement space, so that the alteration was not "reasonably incidental" to the user of the premises.

Lastly, I would mention *Gifford* v. *Dent* (1926), 71 SOL. J. 83, though no covenant against alterations as such was

brought into the discussion; but the source of the grievance was again a large advertisement sign affixed to an outer wall, advertising the defendant's own business. The plaintiff was not the landlord, but another tenant; the defendant held the front room on the second floor, and the plaintiff was tenant of the ground floor and basement. The defendant's agreement obliged him not to allow any placard, poster or advertisement to be fixed on any part of the premises, and it appears to have been assumed that the plaintiff was entitled to sue on it. The court had little hesitation in coming to the conclusion that it had been broken, and *Bickmore* v. *Dimmer* was again distinguished. But apart from this, the plaintiff's alternative claim on the ground of trespass succeeded; the sign overhung the basement, and the plaintiff's premises extended *usque ad coelum*. An objection that the other tenant would not be allowed, if this were so, to put his head out of a window was met by the suggestion that there was what would amount to an easement entitling him to do this.

Our County Court Letter.

THE REMUNERATION OF SOLICITORS.

In *Williams & Sons* v. *Jones*, recently heard at Monmouth County Court, the claim was for £3 13s. 6d. for professional services, viz., appearing at Ross Police Court for the defendant on a summons for driving in a manner dangerous to the public. The defendant, when instructing a member of the plaintiff firm, had produced a letter (from the head office of an insurance company to a local agent) stating that time was required for the investigation of the matter, and the defendant had better instruct his own solicitor. The bill was accordingly sent, at the defendant's own request, but in his name, to the insurance company, but liability had been disputed on the ground that the defendant was not insured. The defendant had eventually suggested that the plaintiffs should sue him, as he could not proceed against the company until he had been compelled to pay. The defendant's case was that, having been told by the insurance company to engage a solicitor to defend him, he had merely acted on instructions, and was not personally liable. His Honour Judge Thomas held that, whatever might be the defendant's rights against the insurance company, he was liable to the plaintiffs for the amount claimed. Judgment was given accordingly, with costs.

THE REMUNERATION OF ESTATE AGENTS.

In the recent case of *Saxton* v. *George Hallam & Sons*, at Nottingham County Court, the claim was for £7 7s. as commission on the sale of a house. The plaintiff's case was that, being himself an estate agent, he communicated with the defendants, who were advertised as the agents for the sale of a house which the plaintiff considered suitable for his own client. The sale was eventually completed, and the plaintiff's case was that one of the defendants' clerks (who was understood to be authorised so to do) had agreed to pay half the 2 per cent. commission to the plaintiff. The defendants' case was that no arrangement was made with any of their partners and their clerk had no authority to settle matters of commission. The clerk's evidence was that no arrangement was made about commission, as the plaintiff had merely enquired about the house and had given the name and address of the interested person, to whom particulars were sent direct. His Honour Judge Hildyard, K.C., observed that there was no suggestion of a regular custom of sharing commission in such cases. A man who had a purchaser did not give the name, unless he was promised payment for it, but there was no proof of any legal contract to pay any commission. Judgment was therefore given for the defendants, with costs.

THE DESCENT OF STATUTORY TENANCIES.

In the recent case of *Starr* v. *Goulding*, at Cambridge County Court, the claim was for possession and £4 17s. 2d. as mesne profits of No. 8, City-road, Cambridge. The plaintiff had bought the premises in 1895, when the defendant's father was a quarterly tenant. Notice to quit was given after the Rent Restriction Acts came into force, but the father had died before any action was taken. If he had died intestate, the statutory tenancy would have passed to his widow, but, if he had left a will, the plaintiff would have been entitled to possession. The widow remained in possession until 1926, when she also died, whereupon the defendant, her son, continued to occupy the premises. The defence was that, although the rent had not been regularly paid, there were no arrears when the summons was issued, and the premises were still controlled. In a reserved judgment, His Honour Judge Farrant held that the defendant had been a trespasser in the first instance. Instead of being removed summarily, however, he had remained on sufferance, and had paid, at very irregular intervals, quarterly sums in the nature of mesne profits. There was never any binding tenancy, however, and the payment of such sums did not constitute the defendant a tenant. The plaintiff was therefore entitled to possession, as in any event the premises were decontrolled. Judgment was therefore given for possession in five weeks, and for the amount claimed, payable at 5s. per month.

Reviews.

Central and Local Government. By F. G. Glover, M.A., of the Middle Temple, Barrister-at-Law. 1936. Demy 8vo. pp. v and (with Index) 216. London: The Estates Gazette, Ltd. 9s. 6d. post free.

This little text-book provides an admirable introduction for the general reader to two difficult subjects. Except for a useful chapter at the end on the control by the Central Government over the various local authorities, the two subjects are dealt with separately. The manner of treatment is distinguished by a pleasing lucidity and avoidance of unnecessary technicality and cataloguing of Acts of Parliament. Students working for examinations will also find this book helpful in the initial stages of their studies.

Ringwood's Principles of Bankruptcy. Seventeenth Edition, 1936. By Alma Roper, of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. lii and (with Index) 683. London: Sweet & Maxwell, Ltd. 22s. 6d. net.

Six years have elapsed since the last edition of "Ringwood," and the fact that the present is the seventeenth edition is proof of the continued vitality of this well-known work. True to its title, the book is an enunciation of the principles of bankruptcy law, and is neither an annotated copy of the relevant Acts, nor a book on bankruptcy practice. Nevertheless, the practitioner, as well as the student, will find the book a reliable guide to practice, as the appendices of statutes, rules and forms comprise 361 of the total 683 pages. Much of the administration of estates in bankruptcy is now done by accountants, in their capacity of trustees, and the learned author has again borne in mind that he is writing largely for non-legal readers. The last chapter devotes twenty pages to a useful discussion of the jurisdiction of the court over foreigners. A doubt is expressed, at p. 311, as to whether *Cooke* v. *Vogeler* [1901] A.C. 102, is still law, in view of the definition of a debtor in the Bankruptcy Act, 1914, s. 1 (2) and s. 4. Since the publication of the book, however, the Court of Appeal have followed *Cooke* v. *Vogeler* in *In re the Debtors* (No. 836 of 1935), reported at 80 Sol. J. 404. (The execution of a deed of assignment in New York, by an American, was there held not to entitle a Belgian creditor to a receiving

order in England.) The Law Reform (Married Women and Tortfeasors) Act, 1935, has been duly noted, and it is pointed out that a married woman may now be served with a bankruptcy notice, and rendered subject to the bankruptcy law, as if she were a *feme sole*. The chapter on, and the text of, the Bills of Sale Acts have been omitted, and the text is thirty-one pages shorter than the previous edition. The light touch, which has characterised the former editions, has been maintained, and candidates for examinations will find that a rather dull branch of the law has been expounded in attractive fashion.

Housing Act, 1935. By H. A. Hill, B.A., assisted by A. W. Nicholls, M.A., B.Litt., both of Gray's Inn, Barristers-at-Law. 1936. Royal 8vo. pp. xxvii and (with Index) 457. London: Butterworth & Co. (Publishers), Ltd.; Shaw and Sons, Ltd. 30s. net.

This is a companion volume to the "Complete Law of Housing" by the first-named author, published in 1934, and forms with that a complete and comprehensive survey of the law and practice relating to housing. Mr. Hill's work is already sufficiently well known to the profession to obviate the need for anything in the nature of a detailed examination; and his present co-adjutor, Mr. Nicholls, has added good work to the subject. It will suffice, therefore, to point out that the present volume is divided into five parts, of which the Introduction—running into a hundred pages, embodying a summary of the Housing Acts with the important memoranda issued by the Ministry of Health (inserted by permission), constitutes a very valuable review of housing legislation and practice. Part 2 is made up of the Housing Act, 1935, with copious annotations. Part 3 sets out all Statutory and Provisional Rules and Orders relating to housing which have been published since the date of the last volume. Part 4 is supplementary to the previous volume, bringing that work entirely up to date; and Part 5 consists of a carefully prepared index both to the present work and its predecessor. The volume before us therefore provides not only a guide to the Housing Act, 1935, but in company with the previous volume affords a complete statement of the present position of the law in regard to housing. One of the most useful features of the work is the reprint of the Housing Act Forms and Orders and Notices Regulations, 1935, which revoke the Regulations of 1932 and prescribe no less than fifty-one new forms, many of which take the place of those previously in use, whilst others are the forms specially prescribed for purposes of the Housing Act, 1935. So far as one can judge, the volume now before us with the previous one provide the clearest and most expeditious way of arriving at a solution of the complexities of housing law and its administration. It should provide a convenient avenue of approach to the consideration of the great consolidating measure now before Parliament which will, it is hoped, bring to something approaching finality a long involved series of Statutes and Regulations relating to this department of local government law.

Books Received.

Tolley's Handbook of Income Tax and Sur-Tax, 1936–37. By Chas. H. Tolley, A.C.I.S., F.A.A., Accountant. London: Waterlow & Sons, Ltd. 1s. net.

Tax Cases. Vol. XIX. Part IX. 1936. London: H.M. Stationery Office. 1s. net.

Report of a Commission of Inquiry Appointed to Examine the Purpose and Effect of the Civil Authorities (Special Powers) Acts (Northern Ireland), 1922 *and* 1923. 1936. London: The National Council for Civil Liberties. 6d. net.

Rent and Mortgage Interest Restrictions. By the Editors of *Law Notes*. Sixteenth Edition. 1936. Demy 8vo. pp. xxiv and (with Index) 279. London: *Law Notes* Publishing Offices. 8s. 6d. net.

Obituary.

LORD ANDERSON.

The Hon. Lord Anderson, the senior senator in the College of Justice in Scotland, died in Edinburgh on Wednesday, 27th May, at the age of seventy-three. Educated at Dundee High School and Edinburgh University, he was called to the Scottish Bar in 1889, and took silk in 1908. He was elected as Liberal M.P. for North Ayrshire in 1910, and he became Solicitor-General for Scotland in 1911. In 1913 he was elevated to the Bench. Lord Anderson was an honorary LL.D. of Edinburgh University.

LORD DARLING.

Lord Darling, formerly a Judge of the King's Bench Division, died on Friday, 29th May, at the age of eighty-six. After a short time in a solicitor's office in Birmingham, he was called to the Bar by the Inner Temple in 1874, and took silk in 1885. He was elected Conservative M.P. for Deptford in 1888, and in 1892 he became a Bencher of his Inn. He was made a Judge of the Queen's Bench Division in 1897, and in 1917 he received the honour of a Privy Councillorship. He retired from the Bench in 1923. A few months later he was created Baron Darling, of Langham, in the County of Essex. An appreciation appears at p. 436 of this issue.

Sir A. K. CARLYON.

Sir Alexander Keith Carlyon, D.L., J.P., died at Harrow, on Saturday, 30th May, at the age of eighty-eight. He was educated abroad and at Sherborne, and was called to the Bar by Lincoln's Inn in 1888. A former High Sheriff of Middlesex, he was Chairman of the Gore Petty Sessional Division from 1923 to 1930. He was knighted in 1926.

Sir OSWALD SIMPKIN.

Sir Oswald Richard Arthur Simpkin, formerly Public Trustee, died at his home at Twyford, Winchester, on Sunday, 31st May, at the age of fifty-six. He was educated at Winchester, and New College, Oxford, and was called to the Bar by Lincoln's Inn in 1905, having been Eldon Law Scholar in 1903. In 1919 he was appointed Public Trustee, and he held that office until 1934, when he retired on account of persistent ill-health. He was made O.B.E. in 1917, C.B.E. in 1920, C.B. in 1922, and K.C.B. in 1928.

Mr. E. W. LAVINGTON.

Mr. Ernest William Lavington, Barrister-at-Law, of Newsquare, Lincoln's Inn, died on Wednesday, 27th May. Mr. Lavington was called to the Bar by the Inner Temple in 1889, and practised at the Chancery Bar.

Mr. H. CAMPION.

Mr. Henry Campion, solicitor, of Exeter, died on Sunday, 31st May, at the age of seventy-two. Mr. Campion was admitted a solicitor in 1886.

Mr. E. A. EDMONDS.

Mr. Edwin Arthur Edmonds, solicitor, of Walham Green, S.W., died at Lewes on Sunday, 31st May, at the age of fifty-nine. Mr. Edmonds was admitted a solicitor in 1900.

Mr. J. H. TURNER.

Mr. John Herbert Turner, solicitor, of Huddersfield and Holmfirth, died on Monday, 25th May, at the age of seventy-one. Mr. Turner, who was admitted a solicitor in 1887, was Clerk to the West Riding Justices. He was a former President of Huddersfield Incorporated Law Society.

Mr. Thomas Penny, solicitor, of Great Berkhamsted, left £32,185, with net personalty £27,547.

POINTS IN PRACTICE.

Questions from Solicitors who are Registered Annual Subscribers only are answered, and without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the Staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 29-31, Breams Buildings, E.C.4, and contain the name and address of the Subscriber. In matters of urgency answers will be forwarded by post if a stamped addressed envelope is enclosed.

L.P. (Amend.) Act, 1926—Addition of Para. 4 to L.P.A., 1925, Sched. I, Pt. IV—Scope of Amendment.

Q. 3314. We should like to have your opinion upon the following question: A, by his will, gave certain freehold property unto his trustees upon trust for his daughter B for life, with power of appointment to, or in favour of, her children and issue, and in default of appointment for her children, equally. A died in 1889 and B was in receipt of the income from the freehold property until her death in 1920. By her will B (*inter alia*) in exercise of the said power of appointment appointed that the said freehold property should be held by the trustees for the time being of A's will "Upon trust to pay and divide the yearly income thereof unto and equally between my said daughters C and D, during their joint lives and upon the death of one of my said daughters then as to the whole income thereof, upon trust for the survivor of my said daughters, and upon the death of the survivor upon trust as to capital and income thereof for my said daughter C absolutely. B's daughters C and D survived her and were in receipt of the income of the property on the 1st January, 1926. In whom did the property then vest? It was considered that this case was governed by the new paragraph of the amending Act of 1926, Sched. I, Pt. IV of the L.P.A., 1925, and that the freehold property vested in C and D as joint tenants for life, and that there should be a vesting deed. Upon reading the case of *Re Barrat; Body* v. *Barrat* [1929] 1 Ch. 336, doubts have arisen as to whether in view of the judgment of Maugham, J., para. 4 is applicable, and whether instead the property vested in the trustees of the settlement upon the statutory trusts. This doubt was further increased by reading the remarks on p. 1164 of the "Encyclopædia of Forms and Precedents" (Butterworth & Co.), where it is stated that the limitation to two for their joint lives and thereafter to the survivor for life is not the limitation within the S.L.A., 1925, s. 19 (2), requiring the execution of a vesting deed vesting the land in them as joint tenants, but is a limitation in undivided shares causing the land to be held upon trust for sale? A further point arises under the same will of A. Under the provisions thereof A's daughter B became entitled to a share in other similar settled shares by virtue of cross-remainders, and now B's share in such other settled shares devolves upon C and D. A deed of partition is being drawn for the purpose of vesting in C and D (and other beneficiaries) their respective shares in severalty. As far as the shares of C and D are concerned, should the partition deed take the form of a subsidiary vesting deed? If the original settled share of B is not held to vest in C and D as joint life tenants but instead is found to be held upon the statutory trusts, will a vesting deed still be required as to the vesting in C and D of the property comprised in the other settled shares?

A. This is a point of considerable difficulty. In *Re Barrat* [1929] 1 Ch. 336, Mr. Justice Maugham held that the amending Act did not apply, because the property went to the survivor before his (limited) interest had ceased. Now this would be so in our subscriber's case if C survived D, but not if D survived C. Clearly the transitional provisions must have operated once and for all; they cannot be varied by subsequent events. We accordingly express the opinion that the amending Act did not apply because the property was not *inevitably* limited in the required manner, but only *conditionally* so limited. On this view, the property vested in the trustees of the will of A upon the statutory trusts (L.P.A., 1925, Sched. I, Pt. IV, para. 1 (1): see *Re Dawson's S.E.* [1928] Ch. 421). We are not quite sure that we fully understand the latter part of the query. It would appear that any property taken in severalty as representing an accruing share to the original interest of B dealt with above, should be vested in the trustees of the will of A upon the statutory trusts for C and D, etc. So far as that original interest of B is concerned there is no settlement (and there can thus be no subsidiary or other vesting instrument).

The Landlord and Tenant Act, 1927.

Q. 3315. Does the expression "predecessors in title" in s. 4 (1) of the L.T.A., 1927, as defined by s. 25 (1) of that Act, mean predecessors in title with reference to the business carried on upon the premises, or predecessors in title in reference to the tenancy itself? If the latter, is there a break in the five years' period if the present tenant's lease is from the landlord himself during such five years?

A. The question submitted is one upon which there is at present no authoritative decision. The better opinion is, however, that the phrase "predecessors in title" refers to the tenancy itself. If the second question means that the landlord himself was in the same business, before granting the lease, he was not a "predecessor in title." The tenant's title was derived by demise, and not by one of the four methods set out in s. 25. Not having had the business for five years, the tenant cannot say that a fresh goodwill has attached in place of the old goodwill.

Commission on General Rates.

Q. 3316. (1) Must the commission on general rates allowed to a landlord under s. 11 (1) of the Rating and Valuation Act, 1925, who pays the rates on property under £13 assessment before the expiration of one-half of the period in respect of which the rates are due, be paid or allowed to the tenant of such property (*a*) in the case of controlled property where no compounding agreement has been made? (*b*) in the case of de-controlled property also where no compensation agreement has been made? It is considered that *Nicholson* v. *Jackson* [1921] has no bearing whatever on either of the above cases, and that the landlord need not pass to the tenant such benefit of commission. (2) Over what period can such excess rent be recovered by the tenant if such commission should, but has not been allowed in the past? Please give cases and references.

A. The case of *Nicholson* v. *Jackson*, quoted in the question, has been followed (since the Rating and Valuation Act, 1925) in *Evans* v. *Baxter* (1930), 46 T.L.R. 270. In answer to: (1) (*a*) The commission must, therefore, be allowed to the tenant in the case of controlled property. The question adds: "where no compounding agreement has been made." In that event, however, it is difficult to see how the question could arise. The fact that the landlord pays the rates implies the existence of a compounding agreement; (*b*) in the case of de-controlled property, the parties can fix their own terms. The tenant's claim to the commission is based on the Rent Acts only, and cannot be enforced in the cases of de-controlled houses, i.e., those outside the Acts. (2) Six months' arrears are recoverable under the Rent, &c., Restrictions Act, 1923, s. 8 (2). Reference may also be made to *Hodgkinson* v. *Hewitt* (1928), 44 T.L.R. 694— a decision under the Sheffield Corporation Act, 1920.

To-day and Yesterday.

1 June.—On the 1st June, 1809, the Chancellor of the Exchequer made a proposal in the House of Commons which brought joy to the judges of Wales. During the eighteenth century, their salaries had slowly grown from a meagre pittance of £200 a year to a precarious £750, dependent on duties on parchment and vellum. It was now suggested that they should be given £300 more, but our legislators were in a more generous mood than that in which they usually approach the question of judicial salaries and made it £400.

2 June.—On the 2nd June, 1849, the library of the great Daniel O'Connell was put up for sale. He had died less than two years before, in Italy, and his body had been brought back to Ireland in a blaze of triumph; yet now the books of the Liberator, the greatest advocate of his time, even those containing his autographs, fetched in Dublin nothing beyond their intrinsic value, apart from all associations connected with them. So fleeting is the magic of a great name.

3 June.—On the 3rd June, 1778, Edward Thurlow was appointed Lord Chancellor, being at the same time raised to the peerage.

4 June.—On the 4th June, 1846, Pierre Lecomte, a former Keeper General of the Forest of Fontainebleau, was tried before the Court of Peers in Paris for an attempt to assassinate King Louis Philippe. Brooding over a grievance arising from the refusal of a pension, he had fired at the royal carriage while the King was out driving. The shots did not take effect. In vain did his counsel urge his honourable character and distinguished military career, arguing that he must have been insane; only three peers voted against the death penalty, and he was accordingly sentenced to be executed as a parricide.

5 June.—On the 5th June, 1882, Sir Charles Bowen was sworn in as a Lord Justice of Appeal in place of Lord Justice Holker, who had just died. In the Court of Appeal, he was much more at home than he had been in the King's Bench Division, where his fine, subtle mind had not displayed itself to the best advantage in dealing with common juries. Lord Esher once declared: "His knowledge was so complete that it is almost beyond my powers of expression. His reasoning was so extremely accurate and so beautifully fine that what he said sometimes escaped my mind, which is not so finely edged."

6 June.—An inordinate love of learning brought about the downfall of The Rev. Duncan M'Caig, a minister in high repute in Edinburgh for his evangelical preaching. On the 6th June, 1831, he was tried in the High Court of Justiciary for an astonishing series of thefts from various booksellers. He had laid hands on the works of Aristotle, Bunyan, Josephus, Sophocles, Ovid, Quintilian, and many more besides. Johnson's Dictionary, Xenophon's Anabasis and Thompson's Seasons had fallen a prey to him. If the "Ladies Poetical Album" had not led him to repentance, one would have expected Jeremy Taylor's "Rule and Exercise of Holy Living" to have had more effect, not to mention a Greek testament and a quarto Bible. He was convicted and sentenced to fourteen years' transportation.

7 June.—On the 7th June, 1878, a curious will case was decided by Warren, J., in Dublin. The testator had typhus fever, and the persons he intended to appoint executors refused to go into the infected house to attest his will. They, therefore, took their places outside so that they could see him through the window, and in their sight he executed the will, making his mark. The document was then taken out to them and they in their turn attested the execution in his sight. This done, he was removed to hospital where he died. The Court upheld the validity of the will.

The Week's Personality.

When Thurlow became Chancellor, the poet Cowper who had been his fellow pupil in the same office in Lincoln's Inn and had somehow found the better side of him, wrote the following verses:—

"Round Thurlow's head in early youth
And in his sportive days,
Fair Science pour'd the light of truth
And Genius shed his rays.
'See,' with united wonder cried
Th' experienc'd and the sage,
'Ambition in a boy supplied
With all the skill of age.
Discernment, eloquence and grace
Proclaim him born to sway
The balance in the highest place
And bear the palm away.'
So the best courser on the plain,
Ere yet he starts is known
And does but at the goal obtain
What all had deem'd his own."

The poet's unqualified eulogies are almost as naive as his apparent belief that the favourite always wins, for there was a good deal to set against the discernment and eloquence of the rugged Thurlow, while few besides Cowper noticed his "grace."

Lord Darling.

Whichever judges are forgotten by posterity, Lord Darling will be remembered, for wit lives longer than deep learning and, though his judicial career more than justified an appointment so bitterly criticised when it was made, it is the "laughter in court," so often provoked by his playful humour, with which his name will be most often linked. At its best, his wit had a certain fastidious lightness and it is well that so much of it should have been recorded. I like particularly his handling of a barrister who dropped his h's and in the course of a case before him kept on referring to the "'orse," the subject-matter of the action. At last Darling's cultured ear could bear it no longer. "Stop a bit," he said. "What was the height of this animal?" "About thirteen 'ands, my lord." "Well, will you during the rest of the case please call it a pony." But he was quite conscious of the dangers of wit and once he wrote: "It is most difficult for a wit to be agreeable; so if you allure a witness into indulging his taste for comicality, you may be sure that he will offend at least one of a tribunal of thirteen."

Abundant Wit.

One would have thought that Lord Darling's witticisms were numerous enough without spurious additions, yet more than one of his obituaries have attributed to him that retort of Mr. Justice Maule to a witness who claimed to have been "wedded to truth from his infancy." "Yes, sir," said that caustic judge, "but the question is how long have you been a widower?" Lord Darling, who had been one of the founders of the Pegasus Club, and had indeed invented its name, always had some shrewd observation when horses were in point. Thus, in commenting upon certain evidence in the great case of *Wootton* v. *Sievier*, he remarked: "All this assumes that all horses run with mathematical precision and that by studying what they had done before you could tell to a certainty what they would do in the next race. If that were so, then the person who would be the best authority on racing would be the Astronomer Royal." His wide human interests made him the very antithesis of the stern, precise, technically-minded and rigidly relevant Avory, J.

Mr. Cecil Hubert Morgan Griffiths, solicitor, of Carmarthen, left £35,036, with net personalty £19,068.

Notes of Cases.

Judicial Committee of the Privy Council.

Metropolitan Coal Co. Ltd. *v.* Jacob Pye.

Lord Hailsham, L.C., Lord Thankerton, Lord Maugham, Sir George Lowndes, Sir Sidney Rowlatt. 27th March, 1936.

New South Wales—Workmen's Compensation—Coal Miner—Disease from Silica Dust Provided for by Special Legislation—Coal Miner excluded therefrom—Certified as suffering from Unspecified Dust—Burden of Proving that Disease not due to Silica Dust—Workmen's Compensation (Silicosis) Act, 1920, No. 13 — Workmen's Compensation Act, 1926-1929, No. 15 of 1926 as amended by No. 36 of 1929.

Appeal from a decision of the High Court of Australia reversing a decision of the Supreme Court of New South Wales on a case stated under the provisions of the Workmen's Compensation Act, 1926-1929, s. 37 (4) at the request of the appellant company by the Workers' Compensation Commission of New South Wales.

The respondent was a miner employed by the appellants in one of their coal mines. He made an application to the Commission for compensation. The application was heard in May, 1933, and there was put in evidence a certificate by a Medical Board (which, by s. 51 (3) of the Act, is conclusive evidence of the matter certified) that the respondent had "a partially incapacitating pulmonary fibrosis which could be due to coal dust." Other evidence was adduced to show a condition of the respondent's lungs which might be due to silica dust or other dusts. By the Act of 1926-1929, provision is made for compensation for workers suffering injury arising out of and in the course of their employment. The definition of "injury" in s. 6 (1) of the Act specifically excludes disease caused by silica dust. Compensation for such a disease to workmen in certain industries is provided for by the Workmen's Compensation (Silicosis) Act, 1920, as amended by the Workmen's Compensation Act, 1926-1929, and by the scheme made under it. Coal mining was not one of the industries included in the Act of 1920 or the scheme made under it. The Commission, having found that the respondent was suffering partial incapacity as a result of pulmonary disease caused by inhalation of dust in the appellants' coal mine, and having stated that, on the evidence, it was not satisfied that the incapacity was due to a disease caused by silica dust, awarded in favour of the respondent. The Supreme Court of New South Wales, by a majority, reversed the decision of the Commission. The High Court of Australia, also by a majority, reversed the decision.

Sir Sidney Rowlatt, in delivering the judgment of the Board, said that in both courts below the only question had been whether the respondent workman must, in order to establish his claim, prove not only that he had contracted a disease arising out of and in the course of his employment, but also that the disease was not caused by silica dust, or whether it sufficed that he should prove the first proposition only, leaving it to the employers to show, if they could, that the disease was due to silica dust. The majority in the Supreme Court of New South Wales, and the minority in the High Court of Australia, acted on the view that the Act of 1926-29 applied only to a category of cases restricted by the omission of cases of disease caused by silica dust, and that the burden of proof accordingly vested on the applicant. That, in their lordships' opinion, was to mistake the scope of this legislation. The intention and paramount enactment of the Act was to provide for compensation in every case of injury (including disease) arising out of and in the course of a workman's employment. To give effect to that enactment, the words "other than a disease caused by silica dust" in s. 6 (1) must be read as inserted in order, not to limit it, but to prevent its being invoked in particular circumstances where the relief would overlap that provided by a special and narrower scheme. Until that overlapping appeared, and was proved by the employers, the operation of that enactment was unaffected. To hold otherwise would have the result that where, as in this case, medical evidence showed that the disease was due to dust without being able to specify the kind of dust, the workman would be left without any compensation at all though undoubtedly suffering from a disease arising out of and in the course of his employment. That was to leave a gap which destroyed the intended completeness of the scheme. Their lordships did not overlook that coal mining was not an industry coming within the operation of the Silicosis Act and Scheme. The result undoubtedly was that if disease in a coal miner was affirmatively proved to be due to silica dust, the workman was left unprotected. In that case the two schemes together did not cover the whole ground. It was possible, however, that pulmonary disease contracted in a coal mine could never be definitely attributed to silica dust in particular. It was unnecessary to speculate on that point. The construction of the Act in its general application could not be affected by the omission of this particular industry from the complementary legislation. Their lordships would therefore humbly advise His Majesty that the appeal should be dismissed.

Counsel: *Macaskie*, K.C., and *Valentine Holmes*, for the appellants; *E. W. Cave*, K.C., and *William Shakespeare*.

Solicitors: *Bell, Brodrick & Gray*; *Pattinson & Brewer*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Court of Appeal.

Kulukundis *v.* Norwich Union Fire Insurance Society.

Slesser, Greene and Scott, L.JJ.

10th, 11th, 12th, 13th, 16th, 17th and 19th March, and 15th May, 1936.

Insurance—Marine Insurance—Freight—Ship Aground—Temporary Repairs—Cost Exceeding Repaired Value—Loss of Freight.

Appeal from a decision of Porter, J.

The plaintiffs were shipowners, and brought this action against the defendants in respect of a total loss of freight under a policy issued by them for £865, part of a total sum insured of £8,000. The policy was subject to the Institute Voyage Clauses (Freight) which, by cl. 5, provided that "in ascertaining whether the vessel is a constructive total loss, the insured value in the policies on the ship shall be taken as the repaired value and nothing in respect of the damaged or break-up value of the vessel or wreck shall be taken into account." (The insured value in the hull policy was £25,000.) The policy was in respect of the freight on carriage of grain from South America to the United Kingdom. The ship, having completed loading the cargo and started the voyage, went aground, but was subsequently taken off by a salvage company under an agreement that they should be paid £11,000 in the event of success and a further claim not exceeding £9,000 was to be the subject of arbitration. The hull underwriters and the shipowners agreed to abandon the voyage, the underwriters paying the owners £7,500 and the ship being abandoned to the salvage company. The cargo owners having been notified, accepted the notice and their underwriters paid as on a total loss of the cargo. After repair, the ship sailed for Rotterdam with 4,250 tons of her original cargo (some having been jettisoned) and was there sold for breaking up. The agreed figures were that the cost of temporary repairs (including release of salvors' lien) would be £19,161, as against which the value of the temporarily repaired ship would be £6,500 at the highest, the net freight (if properly included) would be £5,278, and a contribution by the cargo to the repairs £7,201 at most, making in all £18,979 or less than the necessary expenditure. Porter, J., held that the claim for loss of freight failed.

SLESSER, L.J., allowing the plaintiffs' appeal, referred to *Carras* v. *London and Scottish Assurance Corporation* [1936] 1 K.B. 291, and said that the appellants contended that they had been prevented in a business sense from performing the freight contract by perils of the sea, and that in the face of the agreed figures no prudent man, if uninsured, would have incurred the expense of repairing the ship so as to make it possible to complete the contracted voyage and deliver the cargo. The respondents had contended that the cost of effecting permanent repairs should be the criterion and that against that sum should be set the value of the ship so fully repaired, no consideration being given to the sum which would have been earned in freight by the contracted voyage. His lordship referred to *Rankin* v. *Potter*, L.R. 6 H.L. 83, at pp. 155 and 163; *Moss* v. *Smith*, 9 C.B. 94, at pp. 103 and 106; and *Assicurazioni* v. *Bessie Morris* [1892] 2 Q.B. 652, at pp. 658 and 660, and said that in freight insurance the temporary expenditure necessary to earn the freight, i.e., to complete the voyage, was the true criterion.

GREENE and SCOTT, L.JJ., agreed.

COUNSEL: *Willink*, K.C., and *Cyril Miller*; *Le Quesne*, K.C., and *W. L. McNair*.

SOLICITORS: *Ince, Roscoe, Wilson & Glover*; *Waltons and Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Rowell *v.* Pratt.

Greer, Slesser and Greene, L.JJ.
22nd April and 15th May, 1936.

EVIDENCE—RETURN MADE TO POTATO MARKETING BOARD—WHETHER PRIVILEGED FROM PRODUCTION—AGRICULTURAL MARKETING ACT, 1931 (21 & 22 Geo. 5, c. 42), s. 17.

Appeal from Wisbech County Court.

The plaintiff, a farmer, claimed from the defendant, a merchant dealing in potatoes, money due in respect of potatoes delivered to him. The defendant put in no defence, but counter-claimed alleging breach of contract by the plaintiff in selling to other buyers potatoes which he was bound to deliver to the defendant. It was the custom in the district for merchants to supply sufficient seed potatoes for an agreed acreage, becoming entitled to buy all the potatoes grown from their seed therein, and in the present case the parties had agreed that 9½ acres in two parts of a certain field should be planted with "Royal Kidney" potatoes. Potatoes of that sort were shown to have been sold by the plaintiff to other buyers, but he called evidence to show that they came from four additional acres. The question whether or not this was so was the main issue, and the learned county court judge held that it was, rejecting as evidence a return made by the plaintiff to the Potato Marketing Board set up under the Agricultural Marketing Act, 1931, which, the defendant said, would show whether the plaintiff had made a return with regard to his total acreage of potatoes. An official subpœnaed to produce it had put in a plea of privilege, which was upheld by the learned judge. Judgment was given for the plaintiff.

GREER, L.J., delivered a dissenting judgment.

SLESSER, L.J., allowing the defendant's appeal, said that the return called for asked (*inter alia*) what was the total acreage of potatoes planted on all the land in the plaintiff's occupation. The answer to this might be very material to the determination of the issue in this case. If such evidence were rightly rejected, it would cause substantial wrong or miscarriage of justice within R.S.C., Ord. XXXIX, r. 6. Here the Board was not a government department of which the communications were protected from production as being state secrets, if the Minister claimed such protection: see *Beatson* v. *Skene*, 5 H. & N. 838, at p. 853, and *Ankin* v. *London and North Eastern Railway* [1930] 1 K.B. 527. The Board was constituted under s. 2 of the Agricultural Marketing Act, 1931. So far from its being a government department, several matters pointed to its voluntary nature: see Part I of the 1st Sched. and s. 3. The representative of the Board had based his refusal to produce the return solely on s. 17 (2). In ruling that he had no power to order production the judge was wrong. At common law material evidence of this kind could not be rejected, and s. 17 did not alter the common law position. In the case of a government department, the Minister might consent to production, but here, if the judge was right, it would be a criminal offence under the section to give the evidence whether or not the Board or the person who made the return consented. To prevent a material witness from giving evidence, clear language in the statute was essential: see *Arthur* v. *Bokenham*, 11 Mod. 148, at p. 150. Here s. 17 (2) did not deal with a person giving evidence under legal process. The proviso to the sub-section did not help the respondent. This legislation resembled the Official Secrets Acts 1911 and 1920 (see Act of 1911, s. 2 (1) (*a*), Act of 1920, ss. 6 and 8 (4)), where it was assumed, despite the prohibition of communication of information, that such information might be given in a court of law.

GREENE, L.J., agreed.

COUNSEL: *Pritt*, K.C., and *Elborne*; *Croom Johnson*, K.C., *G. Gardiner* and *A. M. Wallace*.

SOLICITORS: *Burton, Yeates & Hart*, agents for *Southwell, Dennis & Farrow*, of Wisbech; *Metcalfe, Copeman & Pettefar*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Warmingtons *v.* McMurray.

Goddard, J. 9th and 13th March, 1936.

SOLICITOR AND CLIENT—RETAINER FOR ARBITRATION—ENTIRE CONTRACT—RETAINER FOR GENERAL PURPOSE OF CLEARING UP CLIENT'S AFFAIRS—CLIENT'S FAILURE TO PAY CHARGES—SOLICITOR'S RIGHT TO REFUSE TO ACT FURTHER.

Action by solicitors against a client on two bills of costs.

The defendant was a widow and had possessed considerable means. Her affairs had become much involved, and one, Cohn, had induced her to embark upon transactions which caused her serious losses. In 1933, the defendant consulted the plaintiff firm, who thereupon began an investigation of her affairs. An action was begun in the Chancery Division against Cohn, judgment being obtained for £1,500, with interest at 7 per cent., on an interlocutory application, the rest of the action being left to proceed to trial. The plaintiffs began bankruptcy proceedings against Cohn following that judgment. In July, 1934, Cohn persuaded the defendant to make an agreement putting an end to the litigation and the bankruptcy proceedings, and to refer certain matters to arbitration. The plaintiffs, however, proceeded to act in her best interests in connection with the arbitration. Having recovered the £1,500 and interest, and other substantial sums for her, and having worked for her for twenty months, they sent her a first bill of costs for £617. From time to time the plaintiffs pressed for payment of their bill and were met with promises of payment and pleas of delay. The plaintiffs finally refused to continue to act in the arbitration unless their first bill was paid. The defendant then offered to pay for outstanding disbursements and counsel's fees still remaining to be paid, but intimated that she could not pay anything in respect of the plaintiffs' charges until she received certain funds which she was expecting from America. The plaintiffs thereupon discharged themselves from their retainer, and delivered a second bill for £814, of which £744 was on account of the arbitration proceedings. *Cur. adv. vult.*

GODDARD, J., said that there was no defence with regard to the first bill. With regard to the second, the rights and obligations of a solicitor retained to conduct a common law

action (and, therefore, an arbitration) were settled by *Underwood, Son & Piper* v. *Lewis* [1894] 2 Q.B. 306, where it was laid down that, if a solicitor undertook to conduct an action, he made one entire contract to conduct the case to the end, and that he could not discharge himself and remain entitled to any costs except for good cause and on reasonable notice to the client. That was part of the ordinary law of contract. Where there was an entire consideration, there must be entire performance, to entitle the plaintiff to remuneration: see per Jessel, M.R., in *In re Hall and Barker* (1878), 9 Ch. D. 538, at p. 545. If a client failed to perform his bargain, that discharged the solicitor, who might then sue on a *quantum meruit*. If the client failed to put the solicitor in funds for disbursements, that was a good reason for the solicitor's declining to proceed. The client impliedly promised to keep him in funds for disbursements. The solicitor could not, however, as a condition of continuing to represent the client, demand part of his profit costs as the case proceeded. If a solicitor accepted a retainer to continue an action, he would not be justified in refusing to continue to act because his client refused or failed to pay him costs incurred in some other matters independent of the action. He would undoubtedly be able to discharge himself if the client intimated that for any reason he would refuse to pay costs when the time came for payment. The client would in that case be repudiating his contract. In the present case the defendant's failure to pay was no such repudiation. Here, however, the plaintiffs had been generally retained long before the arbitration, for the purpose of getting the defendant out of her difficulties, which might involve bringing several actions and taking all manner of proceedings. The doctrine of entire contract was inapplicable and the arbitration could not be isolated. The reasoning of Jessel, M.R., in *In re Hall and Barker, supra*, was exactly applicable. If there was a series of services which, though nominally in relation to one matter, was really in relation to a succession of matters, it was not within the doctrine because it was not within the mischief. There must be judgment for the plaintiffs on both bills.

COUNSEL: *Blanco White*, K.C., and *Theodore Turner*, for the plaintiffs; *Arnold Hopper*, for the defendant.

SOLICITORS: *Warmingtons; Fosters.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Commissioners of Inland Revenue *v.* New Sharlston Collieries Ltd.

Lawrence, J. 27th March, 1936.

REVENUE—INCOME TAX—COLLIERY COMPANY—RIGHT TO LET DOWN SURFACE—WHETHER AN EASEMENT—ANNUAL PAYMENT FOR RIGHT—WHETHER DEDUCTIBLE—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), Scheds. A and D—FINANCE ACT, 1934 (24 & 25 Geo. 5, c. 32), s. 21.

Appeal by the Crown by case stated from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The respondent company carried on mining operations on lands which they held under a lease made in 1865. It was decided by the House of Lords in 1900 in *New Sharlston Collieries Ltd.* v. *Westmoreland* [1904] 2 Ch. 443, that the lease of 1865 did not operate as a surrender by the lessors of the right of support incident to the surface lands. Accordingly the company entered into a new agreement with the lessors in 1901 whereby they agreed to pay £1,000 a year as rent, and a further acreage rent of £7 10s. for the right to let down the surface. The company were bound to pay compensation in respect of any damage done to buildings on the surface, although they were expressly exempted from liability to pay compensation in respect of mere lowering of the surface not causing any actual damage to buildings and other works or structures. It was contended for the appellants that the right to let down the surface acquired by the respondent company under the agreement of 1901 was an easement within the meaning of s. 21 of the Finance Act, 1934, and that the payments made in respect of it were rent within the meaning of that section, and therefore not an admissible deduction in computing the respondents' profits and gains for the purposes of assessment, by reason of r. 3 (*l*) or (*m*) of Cases I and II of Sched. D. It was contended for the respondents, *inter alia*, (1) that the agreement of 1901 gave them no estate or interest in the surface lands; (2) that the advantage of working their mines without hindrance from the surface owner was not an easement within the meaning of s. 21 of the Act of 1934; (3) that the £1,000 was a contractual payment by the respondents for the right to work their own minerals free from liability for nuisance; and (4) that they were entitled to deduct the £1,000 in computing their profits and gains. The Commissioners were of opinion that the right granted to the respondents by the agreement of 1901 was not, as contended by the Crown, a general right to let down the surface, since (as shown by the fact that the liability to pay compensation for damage to buildings was expressly preserved in the agreement) the right of support of the surface had not been surrendered or extinguished by the agreement. They held that the right conferred was essentially the same as that enjoyed by the mineral owners in *Elliott* v. *Burn* (1933), 18 T.C. 595. The respondents' advantage was contractual and not an easement within s. 21 of the Act of 1934. They accordingly held that the respondents were entitled to relief in respect of the £1,000.

LAWRENCE, J., said that the case turned on the construction of s. 21 of the Act of 1934, having regard to the decision in *Elliott* v. *Burn, supra*. That case had been decided before the passing of the Finance Act, 1934. Its facts, however, seemed to be in no material respect different from those of the present case, and, in view of passages in the judgments in that case, and particularly in that of Lord Warrington, what had, in his (his lordship's) opinion, been decided was that the right conferred by the agreement in that case (an agreement indistinguishable from the agreement in this) was an incident of the land itself which had already suffered tax under Sched. A, No. I. It seemed to him (his lordship) that s. 21 of the Act of 1934 was not directed against profits arising from land the property in which had been separately assessed and charged. It therefore appeared to him that the definition of the word "easement" ought not to be read as including a right which was incident to a part of land the property in which had already been assessed and charged. The decision of the House of Lords had been that the right to support (in respect of which the £1,000 was paid in the present case) was an incident and part of the property itself. It had therefore already suffered tax under Sched. A, and was accordingly not an easement within the meaning of s. 21. The appeal must be dismissed.

COUNSEL: *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the appellants; *J. H. Bowe*, for the respondents.

SOLICITORS: *Solicitor of Inland Revenue; Greaves, Atter and Beaumont*, of Wakefield.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Ancholme Drainage Commissioners *v.* Weldhen.

Lawrence, J. 30th March, 1936.

REVENUE — INCOME TAX — DRAINAGE COMMISSIONERS — EXEMPTION BY LOCAL ACT FROM "ANY TAXES, RATES, ASSESSMENTS OR IMPOSITIONS WHATEVER" — TOLLS — WHETHER EXEMPT FROM INCOME TAX—ANCHOLME DRAINAGE ACT, 1767 (7 Geo. III, c. xcviii).

Appeal by the Ancholme Drainage Commissioners from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

The appellants were appointed under an Act of 1767, passed to provide for the draining of the lands on either bank of the River Ancholme, a navigable river. The Act empowered the appellants to make and keep the river navigable, although

navigation works were not to prejudice the drainage, and provided as follows: "That the navigation and works, towing paths, and haling ways hereby authorised to be made . . . shall be free for the use of all persons . . . upon payment of such tolls as shall be appointed . . . by . . . this Act; and that all taxes, tolls, rates and duties, to be raised by virtue of this Act shall at all times hereafter be exempted from the payment of any taxes, rates, assessments or impositions whatsoever; any Law or Statute to the contrary notwithstanding." The Act of 1767 also provided that mortgages and other instruments executed in pursuance of the powers given by the Act should be exempted from stamp duty. Evidence was given that, whereas precedence was given to drainage in the Act of 1767, navigation and drainage were now intimately linked, and that about one-third of the appellants' revenue was derived from tolls. It was contended for the appellants that the Act of 1767 exempted them from payment of all taxes, including income tax. It was contended for the respondent that the exemption applied in respect of local taxes only, and accordingly did not refer to income tax. The Commissioners decided that there was no exemption from income tax.

LAWRENCE, J., said that he agreed with the Commissioners when they said that the words of the Act of 1767 must be looked at in connection with the subject-matter of the Act and with the context in which the exemption was mentioned. He did not, however, agree that when the subject-matter and context were so considered, the exemption must be read as being one from local taxation only. It had been argued for the Crown that the whole object of the Act had been local, the purpose, the Commissioners and the benefits all being local, and that the exemption must accordingly be read as one from local burdens. In his (his lordship's) opinion, the object of the Act, although local in one sense, was not so in another. One of the primary considerations was the provision in the section containing the exemption that navigation of the river should be free. There was no reason why the public referred to in the preamble to the Act of 1767 should be regarded in any limited sense (as, for instance, the local section of the public living in Lincolnshire where the River Ancholme was), in a case, like the present, of a navigable river leading quickly to the sea. The words of exemption from "any taxes, rates, assessments, or impositions whatsoever," were, in his lordship's opinion, words of the widest possible import, apt to cover either parliamentary or parochial taxes, or other impositions. Further, there was nothing in the context or in the object of the Act to limit those general words. In none of the cases, it was true, except *Duke of Argyll* v. *Commissioners of Inland Revenue* (1913), 30 T.L.R. 48, had the exemption been read as applicable to parliamentary taxes, except where the exempting statute had in terms exempted from parliamentary or parochial taxes. It was, however, also equally true that there was no case where general words, such as those used in the Act of 1767, had been limited to apply only to parochial rates, taxes or assessments, except cases where there had been held to be a special bargain between the promoters of the exempting Act and the persons to be benefited by the exemption, for instance, *Associated Newspapers Ltd.* v. *Corporation of the City of London* [1926] 2 A.C. 429. There was no such bargain in the present case. His lordship drew support for his view from the words "any Law or Statute to the contrary notwithstanding," which followed, and which were equally general. The Legislature were, in his opinion, treating this work of drainage and navigation as one of general public importance to be exempted from all taxes whatsoever. The appeal must be allowed.

COUNSEL: *J. M. Tucker*, K.C., and *Sutton Nelthorpe*, for the appellants; *The Attorney-General* (Sir Donald Somervell, K.C.), and *R. P. Hills*, for the respondents.

SOLICITORS: *Collyer Bristow & Co.*, Agents for *A. A. F. Stubbs*, Brigg; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law

Peterborough Royal Foxhound Show Society *v.* **Commissioners of Inland Revenue.**

Lawrence, J. 10th, 26th, 31st March, 1936.

REVENUE — INCOME TAX — EXEMPTION — SOCIETY EXISTING FOR THE OBJECT OF PROMOTING BREEDING OF FOXHOUNDS —WHETHER AN "AGRICULTURAL SOCIETY"—WHETHER A CHARITY—FINANCE ACT, 1923 (13 & 14 Geo. 5, c. 14), s. 11 (2)—FINANCE ACT, 1924 (14 & 15 Geo. 5, c. 21), s. 23 (2) —FINANCE ACT, 1921 (11 & 12 Geo. 5, c. 32), s. 30—FINANCE ACT, 1927 (17 & 18 Geo. 5, c. 10), s. 24—INCOME TAX ACT, 1918 (8 & 9 Geo. 5, c. 40), s. 37.

Appeal, by case stated, from a decision of Commissioners for the special purposes of the Income Tax Acts.

The object of the appellant society was to promote the interests of foxhound breeding, in connection with which it held annually a foxhound show at Peterborough. The whole of the society's funds, including the proceeds of the annual show, were applied exclusively to the objects of the society. The society enjoyed relief from entertainment tax. Having been assessed to income tax under Sched. D for the year ended the 5th April, 1935, in respect of profits and gains and interest on War Loan, the society appealed to the Commissioners on the ground that it was a charity within the meaning of s. 37 of the Income Tax Act, 1918, and s. 30 of the Finance Act, 1921, as amended by s. 24 of the Finance Act, 1927. Alternatively, the society claimed exemption under s. 23 of the Finance Act, 1924, by which the profits arising to an agricultural society from a show held for the purposes of the society, if applied solely to those purposes, are exempted from taxation. By s. 23 (2) of the Act of 1924 an "agricultural society" is defined as one established for the purpose of promoting, *inter alia*, "live-stock breeding." It was contended for the society that it was a charity, inasmuch as its sole object was the improvement of animals useful to mankind; and that it was an agricultural society engaged in live-stock breeding, "live-stock" being defined in s. 11 (2) of the Finance Act, 1923, as including animals of any description. The Commissioners decided that the society was neither a charity nor an agricultural society. *Cur. adv. vult.*

LAWRENCE, J., said that, in s. 23 (2) of the Finance Act, 1924, an agricultural society was defined as "any society . . . established for the purpose of promoting the interests of agriculture, horticulture, live-stock breeding or forestry." It had been argued for the Crown that the maxim *noscitur a sociis* should be applied, and that "live-stock breeding" could only be taken as referring to animals, the use of which was an integral part of agriculture, horticulture or forestry. Such an interpretation, however, would exclude many animals bred in the ordinary course of agriculture, e.g., town and van horses, hackneys, hunters, racehorses, most breeds of dogs, and fur-bearing animals. He saw no reason why the words should receive that limited interpretation, and was of opinion that "live-stock breeding" in the sub-section included the breeding of foxhounds. There then arose the question whether the society was exempt from income tax as being established for charitable purposes only, within s. 37 of the Income Tax Act, 1918, as amended. It could not be contended that this question was one of fact as to which the Commissioners' finding was binding on the court. Authorities on the point showed that it was for the Commissioners to say what the purposes of the society were and for the court to decide, as a matter of law, whether those purposes were charitable. It had been found that the object of the society was to promote the interests of foxhound breeding. The society sought to bring itself within the fourth category of charities specified by Lord Macnaghten in *Income Tax Commissioners* v. *Pemsel* [1891] A.C. 531, at p. 583, namely, "trusts for other purposes beneficial to the community." The society argued that fox-hunting kept money in the country and brought it to the countryside; that it was good for officers of the Army and

those who took part in it; and that it made for the well-being of animals. Although convinced of the truth of those propositions, he (his lordship) was unable to take the view that the society was established for charitable purposes. The main purpose of the society was to benefit foxhunting and not the community. To the extent that he had held the society to be an agricultural society, however, the appeal must be allowed.

COUNSEL: *J. M. Tucker*, K.C., and *W. K. Carter*, for the appellant society; *The Attorney-General* (Sir Donald Somervell, K.C.) and *R. P. Hills*, for the Crown.

SOLICITORS: *Field, Roscoe & Co.*, agents for *Batten and Whitsed*, Peterborough.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Bromley Trading Co. Ltd. *v.* **John Gill Contractors Ltd.**

Talbot and Macnaghten, JJ. 7th April, 1936.

ARBITRATION—MOTION TO SET ASIDE—ALLEGED ERROR OF LAW—CONTRACT REFERRED TO IN LETTER CONTAINING SUBMISSION TO ARBITRATION—WHETHER CONTRACT PART OF AWARD.

Motion by Bromley Trading Co. Ltd. to set aside an award made in an arbitration between them and the claimants, John Gill Contractors Ltd., on the ground that the award was bad as disclosing an error in law on the face of it. The submission of the parties to arbitration was contained in a letter addressed to the arbitrator by one of them and attached to and forming part of the award. Certain agreed questions for reference were set out in the letter. It was also stated in the letter that the arbitrator was required to take into consideration, *inter alia*, "the specification and schedule of conditions to a contract made in 1934" for the works in question. In his award, the arbitrator decided against the appellants on one point, stating "The Bromley Trading Co. Ltd. are not entitled to any sum in respect of extra time taken by the claimants . . ." It was contended by the appellants (1) that, since, by the letter containing the terms of reference the arbitrator was requested to take into consideration the specification and schedule of conditions to the contract, it was permissible to look at those documents; and (2) that it was provided by those conditions that the work should be completed within eleven weeks from the 12th February, 1934, failing which the appellants were to be entitled to £10 a day for the "extra time" taken by the claimants, and that, since the arbitrator had impliedly stated that the claimants had taken some extra time, it necessarily followed that he must, in deciding that the respondents were not entitled to any sum in respect of the extra time, have misconstrued the conditions, and that there was therefore an error in law appearing on the face of the award. *Cur. adv. vult.*

MACNAGHTEN, J., reading the judgment of the court, said that, except in cases where a specific question of law was submitted for decision to the arbitrator, as in *In re King and Duveen* [1913] 2 K.B. 32, the court had jurisdiction to set aside an award for error of law appearing on its face. It had, however, been clearly established that the error must appear in the award itself or in a document which the arbitrator had incorporated in and so made part of it. A passage from the judgment of Williams, J., in *Hodgkinson* v. *Fernie* (1857), 3 C.B. (N.S.) 189, at p. 202, was much in point. That passage had been referred to with approval by Lord Dunedin in *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning & Weaving Co.* [1923] A.C. 480, at p. 486. The appellants' argument was founded on the proposition that, since the letter containing the terms of reference referred to the conditions of the contract, those conditions were thereby made part of the award, a proposition not supported by any of the authorities and expressly contradicted by the decision in the *Champsey Bhara Co. Case, supra.* It had been said that the strictness of the rule against looking at anything except the award itself had been modified by *F. R. Absalom Ltd.* v. *Great Western (London) Garden Village Society* [1933] A.C. 592. That contention was based on a misapprehension of the decision in that case. The arbitrator there had referred to one clause in a certain set of conditions and stated that he had had regard to that clause. The House of Lords held that the arbitrator had, in acting thus, incorporated the clause in question in his award. That decision had in no way relaxed or modified the strictness of the rule that the error of law must be apparent on the face of the award itself or of some document incorporated with and thereby made part of the award. The respondents' contention that the conditions of the contract ought to be regarded as part of the award because the arbitrator had been requested in the letter containing the terms of reference to take them into consideration was, in the opinion of the court, contrary to the long line of authorities dealing with the matter. The motion must accordingly be dismissed.

COUNSEL: *Sir Lynden Macassey*, K.C., and *L. Mead*, for the appellants Bromley Trading Co. Ltd.; *W. T. Cresswell*, K.C., and *N. Greig*, for the claimants.

SOLICITORS: *W. W. Box & Co.; Kenneth Brown, Baker, Baker.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Binney *v.* **Binney and Hill.**

Bucknill, J. 5th May, 1936.

DIVORCE—DELAY—PETITIONER'S OWN ADULTERY—CULPABLE DELAY AMOUNTING TO ACQUIESCENCE—DECREE REFUSED—SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925 (15 & 16 Geo. 5, c. 49) s. 178, sub-s. (3), proviso.

This undefended petition for dissolution in which a husband petitioner asked for the discretion to be exercised in his favour raised the question of the meaning to be attributed to the word "delay" contained in the proviso to s. 178 (3) of the Judicature Act, 1925, delay being one of the discretionary bars to the pronouncement of a decree.

BUCKNILL, J., in giving judgment, said that there was a difficulty in the case owing to the conduct of the petitioner himself. The marriage took place forty years ago when the petitioner was twenty-four and the respondent twenty-one years old, so that they were now about sixty-four and sixty-one years old respectively. In 1912 the petitioner separated from the respondent because she had renewed an association with the co-respondent. From that time to the present the respondent and co-respondent had lived together, and they had never made any suggestion to the petitioner that they would like their position made regular by the petitioner taking steps for a divorce. In 1912 when the respondent left the petitioner he could have afforded to take steps for a divorce and he threw out hints to the respondent and co-respondent on the subject, but they expressed the wish that the matter should be kept quiet—and the petitioner feeling indifferent—to use his own word, nothing was done, and the illicit association continued. In 1914 the petitioner himself began an illicit association, and he and that woman lived together as man and wife for some nine years. They then parted. Between 1923 and 1934 nothing was done by the petitioner towards obtaining a dissolution of his marriage. He said that he was under the impression that he could not get a divorce then, having regard to his own conduct. That could not be accepted as an excuse for delay up to 1934, the petitioner was an educated man and ought to know the law. He could easily have found it out. Furthermore, there was no reason to believe that up to 1934 the petitioner was anxious for a divorce. It was then that he met the woman whom he now wished to marry. Wishing to marry her he took advice from solicitors and was told that he might be able to get a divorce. Now the respondent and co-respondent also thought that they might as well get married. The

question for the court was whether in the exercise of its discretion a decree ought to be granted to the petitioner The matter was governed by s. 178 (3) of the Judicature (Consolidation) Act, 1925, the proviso to which enacted that the court should not be bound to pronounce a decree of divorce if it found that the petitioner had during the marriage been guilty of adultery or "of unreasonable delay in presenting or prosecuting the petition." Had there been unreasonable delay here? He (his lordship) understood that to mean culpable delay, something in the nature of acquiescence, such as would show the petitioner to have been insensible to the loss of his wife. It was to be assumed that the purpose of the law in making discretionary bars was to encourage lawful wedlock and set its face against adultery. It was made more difficult for a petitioner to obtain a divorce if he had been guilty of adultery or of culpable delay in bringing proceedings for divorce. The delay in the present case amounted to culpable delay. In effect the petitioner did acquiesce in the respondent's adultery, for he took no step to free himself and allow the respondent to contract a lawful union. The petition must therefore be dismissed.

COUNSEL: *Clifford Mortimer*, for the petitioner.

SOLICITORS: *John Carnegie and Moseley* for *Hatwell, Pritchett and Co.*, Birmingham.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

For Table of Cases previously reported in current volume see page xix of Advertisements.

Parliamentary News.

Progress of Bills.

House of Lords.

Alexander Scott's Hospital Order Confirmation Bill.
Royal Assent. [29th May.

Bedwellty Urban District Council Bill.
Royal Assent. [29th May.

Birmingham Corporation Bill.
Read Third Time. [28th May.

Brentford and Chiswick Corporation Bill.
Read Second Time. [28th May.

Buckhaven and Methil Burgh Order Confirmation Bill.
Royal Assent. [29th May.

Cirencester Gas Bill.
Read First Time. [27th May.

Colne Valley and Northwood Electricity Bill.
Read Second Time. [28th May.

Cotton Spinning Industry Bill.
Royal Assent. [29th May.

Dover Corporation Bill.
Read Third Time. [28th May.

East Lothian County Council Bill.
Royal Assent. [29th May.

Education Bill.
Read First Time. [28th May.

Electricity Supply (Meters) Bill.
Royal Assent. [29th May.

London and Middlesex (Improvements, &c.) Bill.
Read First Time. [28th May.

London and North Eastern Railway (General Powers) Bill.
Read First Time. [29th May.

Manchester Corporation Bill.
Read Third Time. [28th May.

Merton and Morden Urban District Council Bill.
Read Second Time. [28th May.

Ministry of Health Provisional Order Confirmation (Barnsley) Bill.
Read First Time. [28th May.

Ministry of Health Provisional Order Confirmation (Bristol) Bill.
Royal Assent. [29th May.

Ministry of Health Provisional Order Confirmation (Falmouth) Bill.
Royal Assent. [29th May.

Ministry of Health Provisional Order Confirmation (Stockton-on-Tees) Bill.
Royal Assent. [29th May.

North Wales Electric Power Bill.
Royal Assent. [29th May.

Solihull Urban District Council Bill.
Read Second Time. [28th May.

Special Areas Reconstruction (Agreement) Bill.
Royal Assent. [29th May.

Stalybridge Hyde Mossley and Dukinfield Transport and Electricity Board Bill.
Read Second Time. [28th May.

Swansea and District Transport Bill.
Royal Assent. [29th May.

Uckfield Water Bill.
Royal Assent. [29th May.

Winchester Corporation Bill.
Royal Assent. [29th May.

House of Commons.

Air Navigation Bill.
In Committee. [28th May.

Birmingham Corporation Bill.
Read First Time. [28th May.

Cornwall Electric Power Bill.
Reported with Amendments. [28th May.

Darlington Corporation Trolley Vehicles (Additional Routes) Provisional Order Bill.
Read Third Time. [29th May.

Derby Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [29th May.

Doncaster Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [29th May.

Dover Corporation Bill.
Read First Time. [28th May.

Gas Light & Coke Company (No. 2) (re-committed) Bill.
Reported with Amendments. [28th May.

London and North Eastern Railway (General Powers) Bill.
Read Third Time. [29th May.

Manchester Corporation Bill.
Read First Time. [28th May.

Marriages Provisional Orders Bill.
Read Third Time. [29th May.

Ministry of Health Provisional Order (Lancaster) Bill.
Read Third Time. [29th May.

Ministry of Health Provisional Order (North Herts Joint Hospital District) Bill.
Read First Time. [29th May.

Ministry of Health Provisional Order (Ramsey and St. Ives Joint Water District) Bill.
Amendments Considered. [29th May.

Ministry of Health Provisional Order (Tees Valley Water Board) Bill.
Read Third Time. [29th May.

Pier and Harbour Provisional Order (Gloucester) Bill.
Amendments considered. [29th May.

Protection of Dogs Bill.
Withdrawn. [28th May.

Reading Corporation (Trolley Vehicles) Provisional Order Bill.
Read Third Time. [29th May.

Rickmansworth and Uxbridge Valley Water Bill.
Reported with Amendments. [28th May.

Questions to Ministers.

HIRE-PURCHASE AGREEMENTS.

Mr. CHORLTON asked the Attorney-General whether he is aware of the practice of certain finance companies or their representatives in obtaining the signatures of householders or their wives to hire-purchase agreements without adequate explanation of their contents; that many such agreements provide that on failure to pay any instalment the full selling price, less a nominal amount, shall become payable and be recoverable at once, although the goods must be returned to the hirer; and that many such agreements provide that the selling price shall be payable in London and thus prevent the hirer defending himself owing to the expense of travelling; and what steps he proposes to take to prevent the injustice of such practices.

The ATTORNEY-GENERAL: I am not aware of the prevalence of the practices referred to. My hon. Friend will appreciate the difficulty of protecting those who sign contracts without reading and understanding their terms. I am, however, always ready to consider any facts which may be brought to my notice with a view to considering whether any action is justifiable or possible. [28th May.

Mr. Louis Charles Tree, solicitor, of South Norwood, left £13,799, with net personalty £13,683.

Rules and Orders.

THE BANKRUPTCY AMENDMENT (No. 1) RULES, 1936, DATED MAY 25, 1936, MADE UNDER SECTION 132 OF THE BANKRUPTCY ACT, 1914 (4 & 5 GEO. 5. C. 59).

1. The following amendments shall be made in paragraph (3) of Rule 103 of the Bankruptcy Rules, 1915 :—

(*a*) In sub-paragraph (*c*) after the words " October 1932 " there shall be inserted the words " and before the 1st day of June, 1936 ".

(*b*) After sub-paragraph (*c*) the following sub-paragraph shall be inserted and shall stand as sub-paragraph (*d*) :—

" (*d*) if done after the 31st day of May, 1936, by 33⅓ per centum ".

2. These Rules may be cited as the Bankruptcy Amendment (No. 1) Rules, 1936, and shall come into operation on the 1st day of June, 1936, and the Bankruptcy Rules, 1915, as amended,(*) shall have effect as further amended by these Rules.

Dated the 25th day of May, 1936.

Hailsham, C.,

I concur. *Walter Runciman*,

President of the Board of Trade.

* S.R. & O. 1915 (No. 1824) I, p. 41. For amendments prior to 1936, *see* " Index to S.R. & O. in Force, June 30, 1933," p. 66.

THE SOLICITORS' REMUNERATION (MANORIAL INCIDENTS) ORDER, 1936.

We, the Right Honourable Douglas McGarel Viscount Hailsham, Lord High Chancellor of Great Britain, The Right Honourable Gordon Baron Hewart, Lord Chief Justice of England, The Right Honourable Robert Alderson Baron Wright, Master of the Rolls, Sir Harry Goring Pritchard, Knight, President of The Law Society, and John William Cocks, Esquire, President of the Incorporated Law Society of Liverpool, being the persons authorised by the fourteenth Schedule to the Law of Property Act, 1922, do hereby by virtue of the powers vested in us by the said Act and of every other power enabling us in that behalf order and direct as follows :—

1. The following amendments shall be made in the Solicitors' Remuneration (Manorial Incidents) Order, 1926 :—

(1) The following Rules shall be inserted after Rule 1 and shall stand as Rules 1A and 1B :—

" 1A. This Order shall apply to business in respect of the negotiation for and completion of an agreement for compensation in respect of manorial incidents which have been extinguished by the expiration of time as it applies to business in respect of the negotiation for and completion of the extinguishment of manorial incidents.

" 1B. The remuneration of a Solicitor to a lord or tenant having the conduct of business in respect of an application to the Minister under Section 140 of the Act shall be that prescribed in the Schedule hereto :

Provided that where an application is made for higher remuneration, the Minister shall, unless he is of opinion that the remuneration prescribed in the Schedule hereto is adequate, direct that the remuneration shall be regulated in accordance with paragraph (*j*) of Rule 1 of this Order."

(2) In the Schedule the following three items shall be substituted for the first item :—

	Lord's Solicitor.	Tenant's Solicitor.
	£ s. d.	£ s. d.
Where the compensation does not exceed £5.	1 0 0	1 0 0
Where the compensation exceeds £5 but does not exceed £10.	2 0 0	1 10 0
Where the compensation exceeds £10 but does not exceed £20.	3 0 0	2 10 0

2. Paragraph (*j*) of Rule 1 of the Solicitors' Remuneration (Manorial Incidents) Order, 1926, shall have effect as if the Solicitors' Remuneration Act General Order, 1919, and the Solicitors' Remuneration Act General Order, 1925, had not been revoked or amended by the Solicitors' Remuneration Order, 1932.

3. This Order may be cited as the Solicitors' Remuneration (Manorial Incidents) Order, 1936, and the Solicitors' Remuneration (Manorial Incidents) Order, 1926, shall have effect as amended by this Order.

Dated the 21st day of May, 1936.

Hailsham, C. *Harry G. Pritchard.*

Hewart, C.J. *John W. Cocks.*

Wright, M.R.

[*This Order does not take effect until it has been laid before each House of Parliament and one month thereafter has elapsed.*]

Societies.

The Law Society.

The annual general meeting of the members of The Law Society will be held in the Hall of the Society on Friday, the 10th July, at 2 p.m. The following are the names of the members of the Council retiring by rotation : Mr. Bird, Mr. Bischoff, Mr. Branson, Mr. Coleman, Mr. Humbert, Mr. Ingledew, Mr. Longmore, Sir Philip Martineau, Mr. Mortimer and Mr. Mowll. So far as is known, with the exception of Mr. Branson, they will be nominated for re-election. There is one other vacancy caused by the resignation of Mr. Herbert Harger Scott.

University of London.

ENGLISH AND SCOTS LAW.

Mr. HAROLD POTTER, Dean of the Faculty of Laws, presided at a lecture delivered at King's College on the 28th May, by Professor A. D. Gibb, of the University of Glasgow, on " The Inter-relation of the Legal Systems of England and Scotland."

Professor GIBB spoke at considerable length on the history of the growth of the two systems, explaining that an initial attraction starting with Malcolm Canmore and his English queen had given place to a repulsion when the two kingdoms were at war and Scotland had turned to the Continent for her models. With the Union under James VI and I a second period of attraction had begun and was still in progress. The Scottish executive had passed to London and the Scottish legislature had followed in 1707. The House of Lords, as the common supreme tribunal, had imported many English principles into the Scottish system, often without improving it. The Scottish Admiralty Court had been abolished as a court of prize and the Scottish judicial system had been modified, notably by the addition of justices of the peace and the introduction of the jury court in certain civil cases. The citation of English authorities in Scottish courts had been a complicating rather than an elucidating factor.

In sketching the effect of the law of England upon the law of Scotland, Professor Gibb remarked that for 230 years the two countries had naturally been affected by similar ideas and impulses of reform in the social sphere, and in that sphere the two systems had run parallel in their development. In such matters as the reform of the franchise, the emancipation of women, the release of land from the restrictions of entail, the right of workmen to combine and the compensation of workmen for injuries, the same main idea had been worked out north and south of the Border. In the spheres of law in which human emotions were less often stirred—e.g., contract, tort and personal property—the law of Scotland had for the most part, even where codification had taken place, withstood change. The codes that applied to Scotland as well as England, such as the Mercantile Law Amendments Acts, the Marine Shipping Act and the Bills of Exchange Act, had preserved the law of Scotland largely intact. It was a noteworthy fact, and one that indicated the robustness of the law of Scotland, that in the great body of lawyers' law her system remained faithful to its fundamental principles.

In the field of statute law, however, one tendency gave much concern to Scots lawyers. The legislature was constantly turning out Acts in which the law of Scotland was provided for by an " adaptation clause." This slipshod manner of legislating, mainly due to lack of time in Parliament, introduced great difficulties into the interpretation of statutes in Scotland, and the Scottish Bench had protested against it times without number. The Companies Act, 1929, laid down that a certain offence was to be a felony in Scotland, where the distinction between felony and misdemeanour was unknown. The Betting and Loans (Infants) Act, 1892, affected certain contracts by minors in Scotland in such a way that no lawyer was able to this hour to say what the effect of such contracts was. When the Ministry of Agriculture and Fisheries Act, 1919, had created a Ministry and abolished the Board which operated both in England and Scotland, the draftsman, reversing the usual practice, had inserted a provision that the Act should not apply to Scotland. Only an extinct Board, therefore, and not the Minister, had any power in Scotland to make orders. This, however, did not prevent orders being made for years, and convictions by the score had been obtained in Scotland for contravention. The violence almost unconsciously done to Scots law as a result of this method of legislating should be a matter of serious concern to those whose interest it was to see the working of the Scottish system in its integrity. It was impossible to estimate how great was the mischief thus created in the *corpus* of Scots law.

The position of Scotland in the United Kingdom had not enabled her legal system greatly to influence that of her

neighbour. Nevertheless, whether consciously or not, the close proximity to England of this alien system and many alien institutions had produced an effect upon the most lively and receptive minds amongst those who were in a position to develop and reform the law of England. For over half a century Scots lawyers had been sitting beside English lawyers in the House of Lords and the Privy Council, judging in English appeals and drawing upon Scottish authority and Scottish analogy. So long as both systems were inspired by a spirit of friendliness and collaboration no real difficulty was caused by the existence of differences. Professor Gibb suggested that Scots lawyers might meet from time to time to consider proposals for the improvement of the laws of both countries. This collaboration would tend to the enrichment of both and would promote harmony while at the same time it would constitute an intensely interesting experiment in comparative law.

LORD MACMILLAN moved a vote of thanks to the lecturer.

Legal Notes and News.

Honours and Appointments.

The President of the Probate, Divorce and Admiralty Division has appointed Mr. CYRIL THEODORE ANSTRUTHER WILKINSON, assistant registrar of the Principal Probate Registry, to be a registrar of the Principal Probate Registry.

Mr. HENRY ANGUS CLIDERO, Senior Assistant Solicitor to the Somerset County Council, has been appointed Town Clerk of Bridgwater in succession to Mr. H. BEDALE, who has been appointed Town Clerk of Hornsey. Mr. Clidero was admitted a solicitor in 1934.

Ipswich County Borough Council have confirmed the appointment of Mr. H. L. SIMMONS as Deputy Town Clerk. Mr. Simmons, who was admitted a solicitor in 1929, previously held the position of Senior Assistant Solicitor.

Mr. H. F. R. ROBERTS, B.A., Senior Assistant and Prosecuting Solicitor to the Southport County Borough Council, has been appointed First Legal Assistant to the West Ham County Borough Council. Mr. Roberts was admitted a solicitor in 1930.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

The directors of the Prudential Assurance Company have appointed Mr. G. P. Harben to be a deputy chairman of the company to fill the vacancy occasioned by the death of Mr. Frederick Schooling.

At the annual general meeting of the Insurance Officials' Society, Mr. R. M'Connell, late general manager of the Royal Insurance Company and the Liverpool and London and Globe Insurance Company, was re-elected president.

The president, Mr. Leslie R. Pym, will be in the chair at the annual dinner of the Land Agents' Society at the Park Lane Hotel on Thursday, 9th July, when Lord Lothian will propose the toast of "The Landed Industry," to which the Minister of Agriculture will reply.

According to the May issue of the *News-Sheet* of the Bribery and Secret Commissions Prevention League, Incorporated, the convictions for bribery to date under the Prevention of Corruption Acts, 1906–16, number, in England, 637; Scotland, 50; Wales, 38; Irish Free State, 21; Northern Ireland, 10; and under other (a dozen) Acts since January, 1907, at least 105—total, 861. Under the Prevention of Corruption Acts there have been 353 police cases, 265 official cases, 138 private cases, and 178 persons sent to prison. Fines and costs where stated amount to £29,604 12s. 6d.

The Trinity Law Sittings will begin on Tuesday, 9th June. The full lists of the appeals and causes set down for hearing are not yet available, but the figures for the King's Bench Division, says *The Times*, show a decrease from 592 to 200. In the Ordinary List there are 12 special jury, 15 common jury and 68 non-jury actions, compared with 84, 35 and 250 respectively for the corresponding term last year. In the New Procedure List there are 84 non-jury actions, as against 194. There are 16 causes in the Commercial List, a decrease of 9. Five actions are set down under Order XIV, an increase of one.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 11th June, 1936.

	Div. Months.	Middle Price 3 June 1936.	Flat Interest Yield.	‡Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	115½	3 9 3	2 19 10
Consols 2½%	JAJO	84xd	2 19 6	—
War Loan 3½% 1952 or after	JD	105⅜	3 6 5	3 1 4
Funding 4% Loan 1960-90	MN	116½	3 8 8	3 0 5
Funding 3% Loan 1959-69	AO	103⅜	2 17 10	2 15 7
Funding 2¾% Loan 1956-61	AO	95¾	2 12 2	2 14 9
Victory 4% Loan Av. life 23 years	MS	114½	3 9 8	3 1 11
Conversion 5% Loan 1944-64	MN	117¾	4 4 10	2 7 7
Conversion 4½% Loan 1940-44	JJ	108¾xd	4 2 9	2 12 2
Conversion 3½% Loan 1961 or after	AO	106½	3 5 9	3 2 5
Conversion 3% Loan 1948-53	MS	104¾	2 17 3	2 10 8
Conversion 2½% Loan 1944-49	AO	101¾	2 9 1	2 5 0
Local Loans 3% Stock 1912 or after	JAJO	96xd	3 2 6	—
Bank Stock	AO	376	3 3 10	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	86xd	3 3 11	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	95xd	3 3 2	—
India 4½% 1950-55	MN	115	3 18 3	3 3 1
India 3½% 1931 or after	JAJO	97xd	3 12 2	—
India 3% 1948 or after	JAJO	85xd	3 10 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	119	3 15 8	3 8 3
Sudan 4% 1974 Red. in part after 1950	MN	116	3 9 0	2 12 4
Tanganyika 4% Guaranteed 1951-71	FA	115	3 9 7	2 15 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	109xd	4 2 7	2 14 0
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109xd	3 13 5	3 7 0
*Australia (C'mm'nw'th) 3¼% 1948-53	JD	103xd	3 12 10	3 9 2
Canada 4% 1953-58	MS	111½	3 11 9	3 2 4
*Natal 3% 1929-49	JJ	101xd	2 19 5	—
*New South Wales 3½% 1930-50	JJ	100xd	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 6
Nigeria 4% 1963	AO	113	3 10 10	3 5 5
*Queensland 3½% 1950-70	JJ	100xd	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	107	3 5 5	2 19 5
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	97xd	3 1 10	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106½xd	3 5 9	3 0 2
Leeds 3% 1927 or after	JJ	96	3 2 6	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106xd	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	80	3 2 6	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	95	3 3 2	—
Manchester 3% 1941 or after	FA	97	3 1 10	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	96	3 2 6	3 2 10
Do. do. 3% "B" 1934-2003	MS	97	3 1 10	3 2 1
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 5
Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 17 10
† Do. do. 4½% 1950-70	MN	116	3 17 7	3 1 6
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	108	3 4 10	3 2 0
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture	JJ	127½	3 10 7	—
Gt. Western Rly. 5% Debenture	JJ	139½	3 11 8	—
Gt. Western Rly. 5% Rent Charge	FA	135½	3 13 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	131½	3 16 1	—
Gt. Western Rly. 5% Preference	MA	120½	4 3 0	—
Southern Rly. 4% Debenture	JJ	113½	3 10 6	—
†Southern Rly. 4% Red. Deb. 1962-67	JJ	115½	3 9 3	3 2 4
Southern Rly. 5% Guaranteed	MA	131½	3 16 1	—
Southern Rly. 5% Preference	MA	122½	4 1 8	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

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